

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

B E T W E E N:

BANK OF MONTREAL

Applicant

and

2423402 ONTARIO INC.

Respondent

**CROSS-MOTION RECORD OF
ZURICH INSURANCE COMPANY LTD.
(Returnable August 1, 2019)**

June 19, 2019

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Fax: (416) 865-2840

Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897

Fax: (416) 865-3710

Email: bkolenda@litigate.com

Jonathan McDaniel (73750F)

Tel: (416) 865-9555

Fax: (416) 865-1180

Email: jmcdaniel@litigate.com

Lawyers for Zurich Insurance Company Ltd.

TO: **MCCARTHY, TÉTRAULT LLP**
Barristers and Solicitors
TD Bank Tower
66 Wellington Street West
Suite 5300
Toronto ON
M5K 1E6

Heather L. Meredith
Tel: (416) 601-8342
Email: hmeredith@mccarthy.ca
Geoff R. Hall
Tel: (416) 601-7856
Email: ghall@mccarthy.ca

Tel: (416) 362-1812
Fax: (416) 868-0673

Lawyers for the Applicant

AND TO: THE SERVICE LIST

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Court File No. CV-18-610236-00CL

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NOTICE OF MOTION
(Motion to Strike the Motion of the Administrative Agent)

The moving party, Zurich Insurance Company (“**Zurich**” or the “**Surety**”), will make a Cross-Motion to a Judge presiding over the Commercial List on Thursday, August 1, 2019 at 10:00 a.m., or as soon before/after that time as the Cross-Motion can be heard at the court house, 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Cross-Motion is to be heard

☐ in writing under subrule 37.12.1(1) because it is ;

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE CROSS-MOTION IS FOR

- (a) An order striking the notice of motion dated April 24, 2019 of the Applicant, the Bank of Montreal (“**BMO**”), as administrative agent for certain lenders (the “**Lenders**”) pursuant to the credit agreement dated as of August 28, 2014, as amended, (the “**Credit Agreement**”);
- (b) An order that this Cross-Motion be heard before the hearing of BMO’s motion;
- (c) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE CROSS-MOTION ARE

BMO Has No Standing to Bring Its Motion

2. BMO’s materials filed in support of its motion do not disclose its standing to seek relief related to a call on the performance Bond made by Project Co. As will be further explained below, BMO, acting on behalf of the Lenders, could have exercised its own right to make a call on the Bond by exercising the Lenders’ Step-In rights and making the Balance of the Construction Contract Price Available.

3. Moreover, Section 6.1 of the Lenders’ Direct Agreement required BMO to make a proper call on the Performance Bond “forthwith” but it never did. The Lenders instead chose not to take that step, but rather brought this motion seeking relief that they would only have standing to advance if they had taken that step. They seek to have all of the benefits of stepping into the Project and enforcing the Bond against Zurich without the corresponding burdens. Their attempt to do so is an abuse of process.

Overview of the Project

4. BMO's motion and this Cross-Motion arise out of the ongoing Cambridge Memorial Hospital Capital Redevelopment Project (the "**Project**"). The Project is a combination of renovations and new construction for the Cambridge Memorial Hospital ("**CMH**") that is intended to achieve:

- (a) an increase in up to 52 beds;
- (b) expanded clinical services facilities, including emergency, surgery, medicine, mental health, obstetrics and rehabilitation;
- (c) expanded clinical support services, including laboratory, diagnostic imaging and central supply services; and
- (d) enhanced physical facilities, including a new lobby, retail area and medical education campus.

5. In late August, 2014, a series of agreements were signed to facilitate the Project. These agreements contemplated that the Project would be complete by now and, in particular:

- (a) the initially scheduled Interim Completion date was November 30, 2016;
- (b) the initially scheduled Substantial Completion Date was March 31, 2019;
- (c) the initially scheduled Final Completion Date was May 15, 2019.

6. None of these milestones has been achieved. The contractor responsible for the project, Bondfield Construction Company Limited ("**Bondfield**") began to experience liquidity issues in

2014 and 2015, at least in part because it took on a number of public infrastructure projects, including the Project.

7. In order to appreciate why, in May of 2019, the parties find themselves in the position they are in it is necessary to outline the legal structure of the project and the bonding arrangements supporting it.

Project Legal Structure

8. In a typical construction project, the primary economic parties in a performance bond relationship are the owner, the general contractor, and a surety providing the bond supporting the underlying contract. In most cases a lender is involved, often, although not exclusively, by providing financing to the owner.

9. Normally, the owner is the primary source of liquidity for the project, with a lender often supplying that liquidity through the owner. The owner has a tangible stake in monitoring progress of the project, and also typically has control over, or access to, undisbursed balances under the construction project. When a default occurs, the owner has an incentive to declare the default, and involve the surety early under the bond. The bonding company then has to make an election of which of the four named options available to the Surety under a typical bond it will select. These options typically are:

- (a) Remedy the default (Option 1);
- (b) Complete the contract (Option 2);
- (c) Obtain a bid for the completion of the contract by a replacement contractor (Option 3); or

- (d) Pay the penal sum under the bond, which is the bond limit minus the undisbursed balance of the construction contract price (Option 4).

10. The Performance Bond in this case was conventional. There was nothing about this Bond that should have caused the present issues between the parties.

Project Structure

11. The present difficulties—and the Lenders’ motion—flow from a mistaken impression that the Performance Bond should function differently because of the unique structure of the Project.

12. The structure of the Project differs in several ways from a typical construction project. It involves six parties with different economic interests that do not reflect the alignment of interests typically seen in a conventional construction project. The Project has five primary stakeholders:

- (a) CMH, the owner of the hospital site;
- (b) Infrastructure Ontario (“**IO**”), which provides funding to CMH;
- (c) Bondfield, which is the contractor;
- (d) 2423402 Ontario Inc. (“**Project Co.**”), a special purpose vehicle originally owned and controlled by Bondfield;
- (e) The Lenders, who provided financing to Project Co. for the construction of the Project; and
- (f) Zurich Insurance Company Ltd. (“**Zurich**”), which issued the performance bond at issue in on this motion.

13. Under the Project structure, progress payments made to Bondfield are paid with funds borrowed by Project Co. from the Lenders. CMH, the true “owner” of this Project, is obliged to pay lump sums to Project Co. on the achievement of interim completion and substantial completion. These payments are not funded by CMH as owner. They come from IO. Once these funds are received by Project Co., Project Co. has committed to disburse them to the Lenders to pay down advances made by the Lenders.

14. Under this structure, the contract that the Performance Bond supports – the Construction Contract – is an agreement between Bondfield and Project Co.

15. While Project Co. occupies the legal position of a traditional owner under the Construction Project, it is not, economically, the owner within the Project structure. The “real” owner under the Project, CMH, on the other hand, must exercise its rights by declaring Project Co. in default, and yet is constrained by the terms of the Lenders’ Direct Agreement from controlling how the declaration of any default would unfold.

Default Under the Project’s Contemplated Structure

16. The Lenders bargained for a right to call on the Bond, but the structure required that if they wanted to call on the Bond, as a prerequisite, they were required to agree to commit the Balance of the Construction Contract Price in order for the call on the Bond to be valid.

17. Sections 6 and 7 of the Lenders’ Direct Agreement demonstrate how the parties contemplated that a default under the Project would unfold. These sections contemplate that a declaration of an “Event of Default” by Project Co. would trigger a 120-day Notice Period in which CMH would be precluded from terminating the Project Agreement and during which the

Lenders could prevent a termination of the Project Agreement by exercising its “Step-in Rights” under the Lenders’ Direct Agreement.

18. Section 6.1 of the Lenders’ Direct Agreement further provides, on the occurrence of a Project Co. Event of Default (that was also a default by the Contractor), that the Agent (BMO) was *required* to serve a notice of default on Zurich “forthwith” and make demand on the Surety under the Performance Bond.

19. If the Lenders’ position now is that Bondfield is in default, that must also have been the case in August 2018. Yet BMO did not make a proper claim on the bond in August 2018, or ever. It still has not made a proper claim on the Bond because it refuses to commit to making the Balance of the Construction Contract Price available to Zurich to ensure completion of the contract.

20. Section 7.6 of the Lenders’ Direct Agreement contains an express acknowledgment by the Lenders that any rights they may have to call on the Bond are subject to the Surety’s rights to receive the Balance of the Construction Contract Price:

For greater certainty, **Agent [BMO] acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to Agent’s obligation as an Obligee to pay the Balance of the Contract Price.** If Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract, Agent shall pay to CMH an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms “Obligee”, “Surety”, and “Balance of the Contract Price” have the meanings given to them under the Performance Bonds. [emphasis added]

21. Section 7.6 of the Lenders' Direct Agreement makes the purpose of the Performance Bond very clear. The Bond does not exist to protect the economic interest of the Lenders. It is there to ensure the completion of the Project. Section 9(c) of the Construction Contract confirms this overall intention, stipulating that the obligations of the Surety under the Bonds "shall not extend to or include any obligations relating to the Financing or Cost of the Financing. . .".

22. The Multiple Obligee Rider further expressly provides that in the event of a claim under the Performance Bond by CMH or BMO, CMH or BMO, as the case may be, shall make available to the Surety in accordance with the terms of the Construction Contract the Balance of the Construction Contract Price.

23. Had the Lenders called on the Bond in the manner that the Project structure contemplated they would have been required to make available the Balance of the Construction Contract Price. But they did not. They have orchestrated a receivership in order to attempt to avoid that obligation. The Lenders' appointment of a receiver as a means of causing Project Co. to call on the Bond does not make the Surety's legitimate expectation of receiving assurances as to available Project liquidity before electing any less reasonable.

24. The Lenders' bad faith allegations depend on the flawed premise that it is unreasonable for a Surety to expect assurances of access to available Project liquidity before it makes an election as to how it will respond to a call on the Bond. It is impossible to reconcile that flawed premise with the clear terms of the Bond and of the applicable Project agreements.

Calculation of the Balance

25. The Lenders' position as to the calculation of the Balance of the Construction Contract Price also cannot be reconciled with the applicable agreements and with commercial reality.

26. The Balance of the Construction Contract Price is defined in the Performance Bond as “the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract”.

27. Provisions granting access to the Balance of the Construction Contract Price to a Surety reflect the reality that when a Surety responds to a call on the Bond, it undertakes to ensure completion of the contract in accordance with its terms, which include the owner continuing to comply with its obligations under the contract (such as by paying the balance of the contract price to the Surety). The obligation to ensure owner compliance properly belongs to anyone calling on the Bond. The provisions in the Lenders’ Direct Agreement and the Multiple Obligee Rider reflect this reality by requiring an Obligee making a claim on the Bond to make the Balance of the Construction Contract Price available.

28. The Balance of the Construction Contract price is (under the terms of section 3 of the Bond) subtracted from the Surety’s obligation to make available sufficient funds to pay to complete the Principal’s obligations under the Contract. Because it measures the Surety’s obligation to supply liquidity to the Project, the calculation of the Balance of the Construction Contract Price must be capable of easy determination so that the project can seamlessly progress to completion. How much money is available to fund completion is: (a) the performance bond limit; plus (b) the difference between the contract price and the amount already paid to the Contractor.

29. Questions about whether contractual amounts such as liquidated damages claims or set-offs are available under the Bond involve different, and in most cases highly complex, questions of:

- (a) who is responsible for delays leading to liquidated damage claims and attendant set-offs;
- (b) whether any contractual entitlement to such damage claims has been triggered as a matter of law; and
- (c) given the particular wording of the Bond and its role in the Project, whether the parties intended that amounts attributable to economic delay or liquidated damage claims – which are covered by a separate Bond – would be covered by the Performance Bond.

30. Adopting a strained interpretation of “Balance of the Construction Contract Price” that requires assessment of possible future set-offs or liquidated damages claims before knowing how much liquidity is available to complete the project makes no commercial sense. If amounts attributable to liquidated damages claims or set-offs are the responsibility of the Surety, the claim for them will be available against a solvency-regulated bonding company, removing any justification for exercising set-off rights against the Balance in the interim.

Events Leading to the Claim on the Bond

31. On August 10, 2018, CMH notified Project Co. that it was in default under the Project Agreement. This triggered a 120-day period within which BMO could exercise its Step-In rights under section 7 of the Lenders’ Direct Agreement, and within which CMH could not exercise certain rights, including terminating the Project Agreement.

32. Discussions then ensued between the parties concerning the management of any claim under the Bond. During these discussions, it quickly became apparent that the unique structure of

the Project, and the Bond's role within it, caused difficulties in managing any claim under the Bond. A meeting took place on October 5 among BMO, IO, CMH and Zurich in which the parties discussed the future of the Project.

33. On October 10, 2018, BMO wrote to CMH, IO, and Zurich to identify follow-up issues arising from the October 5 meeting, including potential sources of liquidity to fund the cost of the remaining construction work to achieve Interim Completion, revisions to the Project Schedule and the Project Agreement, a Revised Financial Model, vacating remaining liens, replacing Project Co, and performance security going forward.

34. Counsel to Zurich responded by email on October 12, 2018, and in doing so pointed out that under the contemplated structure, if either BMO or CMH were to make a call on the Bond, they would be required to make available the Balance of the Construction Contract Price to Zurich. Counsel further indicated its assessment that at that time, the Balance of the Construction Contract Price was \$59,792,09.17 plus \$12,739,224.94 on account of the holdback. The email also pointed out Zurich's position that the Bond was intended to facilitate completion of the contract, not to cover economic issues such as liquidated damages claims. These were to be covered by the Demand Bond.

35. After a later meeting among the parties, BMO responded setting out the Lenders' position, raising many of the issues which it now raises on this motion, including that:

- (a) Zurich is responsible for more than just costs of completing the Project; and

- (b) Any obligation to make the Balance of the Construction Contract Price available was subject to the Balance taking into account set-offs and liquidated damage claims.

36. In its October 22, 2018 letter, the Lenders' counsel declared that "[t]he purpose of the Bonds is to keep the Lenders whole." This statement reveals the misconception that underlies the Lenders' assessment of their legal position. While it may be the case that the Demand Bond serves the primary commercial purpose of keeping the Lenders whole, this was never intended to be "the" purpose of the Performance Bond. As is apparent from section 7.6 of the Lenders' Direct Agreement, paragraph 9(c) of the Construction Contract, and the very concept of a performance bond, the purpose of the Performance Bond is to ensure that the Project is rehabilitated to the extent possible within the limits and subject to the terms of the Bond.

37. As events began to deteriorate, BMO purported to make a call on the Bond on November 16, 2019. In doing so, BMO provided a copy of its letter to Bondfield declaring Bondfield to be in default, alleging failure to pay liquidated damages, failure to remove liens from title to the Site, and a failure to maintain the Project Schedule. BMO did not on behalf of the Lenders exercise their Step-In rights under the Lenders' Direct Agreement and failed to confirm that it would make available the Balance of the Construction Contract Price.

38. Zurich replied to BMO's purported call on the Bond disputing that a proper call on the Bond had been made, but offering to pursue discussions toward a completion arrangement consistent with the terms of the Performance Bond. By email dated November 21, 2018, counsel to Zurich communicated its position that it was prepared to select Option 3 by involving Ellis Don,

but required assurances as to available liquidity before it could do so. This was a reasonable position for the Surety to take, and was fully consistent with the terms of the Bond.

39. The Lenders' response was to bring an application to appoint a receiver over Project Co. for the purposes of making a claim under the Bond. The Receiver then purported to make a claim on the Bond on December 7, 2018.

Zurich is Acting in Good Faith

40. As with BMO's purported November 16 claim on the Bond, the Receiver's claim on the Bond was not accompanied by any commitment to make available the Balance of the Construction Contract Price to ensure sufficient liquidity to complete the Project. It has always been and remains Zurich's legal position that it is entitled to insist on such arrangements being in place before it elects to take any formal steps under the Bond.

41. Over the ensuing months, the parties were unable to agree on a satisfactory completion arrangement, in part owing to their disagreements concerning the proper and intended interpretation of the terms of the Bond. Zurich has always been prepared to accommodate a reasonable arrangement that ensures that the Project progresses while still protecting the Lenders' ability to advance whatever monetary claims they may seek to advance on a full evidentiary record. Zurich would at all times have been within its rights to simply deny the claim due to Project Co's failure to commit to pay the Balance of Contract Price. Zurich has remained engaged in the process despite the Lenders' unreasonable insistence that it make an election without assurances as to available liquidity. Far from evidencing bad faith, that Zurich remains involved is evidence of its good faith commitment to get the Project completed.

42. Zurich would at all times have been within its rights to simply select Option 4, pay the penal sum, and walk away. But it has remained engaged in the process despite the Lenders' unreasonable insistence that it make an election without assurances as to available liquidity. Far from amounting to bad faith, that Zurich remains involved is evidence of its good faith commitment to get the Project completed.

43. Zurich has been actively engaged in moving the Project forward, notwithstanding the parties' disagreement over whether a proper call on the Bond has occurred. In particular,

- (a) it has disbursed in excess of \$21 million without having access to the liquidity contemplated under the terms of the Bond;
- (b) in or about mid-July 2018, Zurich engaged Perini Management Services (“**Perini**”) to oversee and manage the ongoing construction work on the Project;
- (c) Perini has, in turn, undertaken significant work on the Project, including:
 - (i) **Subcontractor re-engagement:** Many subcontractors had left the project by the time Perini was engaged. Perini and BBCG reviewed and approved approximately \$13 million worth of payment bond claims to various subcontractors and suppliers in order to bring accounts current. In addition, in construction liens and notices of liens were resolved or “bonded off” in this process, allowing for necessary subcontractors to return to the site in order to continue progressing their work towards completion of the Project.
 - (ii) **Phase 2 Work to move the Project toward Interim Completion,** including:

- (1) HVAC and plumbing equipment start-up and commissioning;
- (2) Sprinkler system and fire pump start-up and commissioning;
- (3) Temporary Measure N vestibules added between the old and new CMH building wings in order to allow occupancy for the new wing;
- (4) Repair of resilient sheet flooring defects and replacement of resilient sheet flooring;
- (5) Repairing epoxy terrazzo floor finishing defects on 15,000 square feet of flooring;
- (6) Repairing exterior building envelope defects which had caused multiple breaches in the air and vapor barrier and exterior insulation;
- (7) repairing intumescent paint defects on the structural steel at the link bridges between the old and new wings of the hospital;
- (8) reinstalling flooring in the poured floors of the Operating Rooms; and
- (9) repairing multiple other major and minor deficiencies on the deficiency lists.

(iii) **Preparations for Phase 3 Work post-Interim Completion:**

- (1) Zurich engaged EllisDon to complete Phase 3 after Interim Completion. Ratification agreements have been completed with 13 subcontractors, with more expected before Interim Completion, that will allow for the assignment of the various subcontractors and their Bondfield contractual scope to EllisDon.
- (2) Phase 3 of the project is estimated to take over 30 months to complete and consists of complicated renovation work in the existing B and C wings of the hospital. There are numerous phases involved in order to complete the work without unduly disrupting hospital operations. As a result, there is a significant amount of planning and coordination that is taking place between Perini, EllisDon and CMH so that all the necessary planning and sequencing is developed and agreed upon before Phase 3 begins. Meetings have been held starting in February 2019 and occur every other week and will continue for several weeks more until all plans and schedules are settled.

44. Given the significant effort that has been undertaken without a completion agreement and without any assurance that liquidity would be available to complete the Project, it is plain and obvious that there is no merit to the Lenders' suggestion that Zurich is acting in bad faith.

45. Zurich has taken a reasonable commercial position in response to BMO's failure to step in and make a claim on the Bond, and has offered a way forward that fully permits the Lenders to advance any claims they wish to pursue for compensation under the Bond.

Irony of BMO's Allegation of Bad Faith

46. Zurich disputes the legal premise underlying BMO's motion, which appears to be that a *bona fide* dispute over contractual entitlements in a case such as this can possibly amount to bad faith. But if one were to accept that such differences can be characterized as bad faith, it is not clear that as between the Lenders and Zurich, it is Zurich that is acting in bad faith.

47. The Lenders were faced with a straightforward process contemplated by the P3 model and the Bond that they could have exercised so as to remove any doubt as to Zurich's obligations under the Bond.

48. The Lenders' Direct Agreement provided an explicit procedure when faced with CMH's declaration of a default under the Project Agreement. BMO on behalf of the Lenders were given 120 days to exercise their Step-In rights under the Lenders' Direct Agreement, which would have charted a clear path to involving the Surety by making available the Balance of the Construction Contract Price.

49. But the Lenders did not like their rights and corresponding obligations under this structure. Believing that the Performance Bond exists for the purpose of making the Lenders whole, they struggled to find a way to avoid doing what the Project Agreements plainly contemplated. The Lenders waited until the 120 day period triggered by CMH's declaration of default was about to expire, and then avoided stepping into the Project by appointing a Receiver to do what BMO could and should have properly done under the Project Agreements.

50. The Lenders then caused Project Co. to be in default of the Construction Contract by refusing to advance further funds to Project Co., or to give assurances that liquidity to complete the Project would be available, thereby discharging Zurich from any obligation under the Bond.

51. While the Lenders were doing this, Zurich was at work doing and funding what it could to keep the Project moving in spite of the parties' disagreement, and without any assurance of obtaining what it reasonably believed it was entitled to have under the Bond. For this, the Lenders accuse Zurich of bad faith.

52. If one accepts the premise that the Performance Bond is primarily directed at building a hospital and not – as the Bank contends – making the Lenders whole at all costs, the Lenders position on bad faith is impossible to reconcile with the applicable agreements.

BMO's Claims Cannot be Determined on a Motion

53. Apart from the lack of substantive merit to BMO's motion, the Court has no jurisdiction to grant the orders sought.

54. The relief sought in paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) of BMO's Notice of Motion cannot be granted on a motion as these paragraphs seek final determinations of rights that can only be granted in a properly constituted Application or Action. The relief sought has little to do with the Receivership *per se* but expressly seek final determinations of Zurich's substantive rights and obligations *vis a vis* Project Co. and BMO.

55. The law does not recognize an interim declaration. Declarations of rights and obligations constitute final relief not available on this motion and must be sought in an originating proceeding.

56. As to the remaining substantive relief claimed in paragraphs 1(d) and 2(c) of BMO's Notice of Motion, these claims seek mandatory orders. BMO has adduced no evidence that the test for granting an interim mandatory injunction has been satisfied. In particular, the affidavits filed

by BMO on its motion contain no evidence of irreparable harm caused by a failure to grant the mandatory orders it seeks.

57. Indeed, there could be no such evidence of irreparable harm. As between Zurich and BMO, this is a fight about money between two financial institutions. Zurich is ready, willing and able to step in to fund completion of the Project up to the limits of its commitment. It will do so on terms that will preserve BMO's ability to bring forward the economic claims that underlie the declarations it seeks. Conversely, BMO has brought its motion seeking unavailable relief based on unfounded allegations of bad faith against Zurich.

58. There is no need for BMO's motion, and it is without merit. It should be struck as an abuse of process under Rule 25.11 of the *Rules of Civil Procedure*.

59. Such further and other grounds as the lawyers may advise, and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Cross-Motion:

- (a) The Affidavit of Adrian Braganza sworn May 31, 2019, and exhibits thereto;
- (b) The Affidavit of Eden Orbach, sworn December 5, 2018, and exhibits thereto;
- (c) The Affidavit of Eden Orbach, sworn May 6, 2019, and exhibits thereto; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 31, 2019

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940
Fax: (416) 865-2840
Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897
Fax: (416) 865-3710
Email: bkolenda@litigate.com

Jonathan McDaniel (73750F)

Tel: (416) 865-9555
Fax: (416) 865-1180
Email: jmcdaniel@litigate.com

Lawyers for Zurich Insurance Company Ltd.

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Motion to Strike the Motion of the Administrative Agent)

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940
Fax: (416) 865-2840
Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897
Fax: (416) 865-3710
Email: bkolenda@litigate.com

Jonathan McDaniel (73750F)

Tel: (416) 865-9555
Fax: (416) 865-1180
Email: jmcdaniel@litigate.com

Lawyers for Zurich Insurance Company Ltd.

TAB 2

Court File No. CV-18-610233-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

B E T W E E N:

BANK OF MONTREAL

Applicant

and

2423402 ONTARIO INC.

Respondent

**AFFIDAVIT OF ADRIAN BRAGANZA
(Sworn May 31, 2019)**

I, Adrian Braganza, of the City of Fort Lauderdale, in the State of Florida, in the United States of America, MAKE OATH AND SAY:

1. I am Senior Claims Counsel at Zurich Insurance Company Ltd. ("**Zurich**"), and, as such, I have knowledge of the matters contained in this affidavit. Where my knowledge is based on information and belief I state the source of that information and believe it to be true.
2. I have been responsible, on behalf of Zurich, for handling the claims related to Bondfield Construction Company Limited ("**Bondfield**") concerning the Cambridge Memorial Hospital project, described further below. I have 32 years of experience handling surety bond claims.

3. Zurich is a corporation licensed to carry on business as a surety in the Province of Ontario. Zurich's business includes writing surety bonds for the construction industry, from small to large firms performing public works projects, as well as private construction projects.

4. I have reviewed the affidavits of Eden Orbach sworn December 5, 2018 ("**First Orbach Affidavit**") and May 6, 2019 (the "**Second Orbach Affidavit**") in this proceeding.

5. I swear this affidavit in response to certain issues raised by Mr. Orbach in his affidavits on the pending motion of the Bank of Montreal ("**BMO**" or the "**Administrative Agent**") seeking declarations and other relief ("**BMO Motion**") as well as in support of Zurich's cross-motion to strike BMO's motion and other relief ("**Zurich Motion**").

THE CAMBRIDGE MEMORIAL HOSPITAL PROJECT

6. This proceeding concerns construction on the Cambridge Memorial Hospital ("**CMH**") project (the "**Project**"), an approximately \$187 million "public private partnership" ("**P3**") construction project to build a new wing (the "**A Wing**") of CMH, and to perform major renovations on CMH's existing wing (the "**B Wing**"). The Project is a large, complex, and challenging construction undertaking.

7. Zurich was not involved in Phase 1 of the Project.

8. Phase 2 of the Project is the construction of the approximately 240,000 square foot A Wing. Phase 2 is currently underway, and nearing completion. As set out by Infrastructure Ontario ("**IO**") on its website,¹ this construction involves:

- A new acute care wing to include:

¹ <https://www.infrastructureontario.ca/Cambridge-Memorial-Hospital/>

- clinical services: surgical suite, birthing suite, emergency department, medical/surgical unit, intensive care, maternal newborn, pediatrics, nuclear medicine and mental health unit
- clinical support services: laboratory and medical devices reprocessing
- other services: medical education campus, main entrance, lobby and registration

9. Phase 3 of the Project consists of major renovations to the B Wing encompassing approximately 150,000 square feet. As set out by IO on its website, cited above, this construction involves:

- Major interior renovations in the existing 'B Wing' and renovations to infrastructure and space standards upgrades primarily to the following units:
 - clinical services: rehabilitation, medical surgical and emergency
 - clinical support services: diagnostic imaging

THE STRUCTURE OF THE CAMBRIDGE HOSPITAL PROJECT

10. The Project is a P3 project, with funds originating from IO.

11. As IO notes on its website, IO issued a Request for Qualifications on the Project on June 5, 2013 and selected a short-list of bidders on September 9, 2013. IO then issued a Request for Proposals on November 8, 2013, and selected Bondfield as the winning bidder. The relevant Project agreements, including the bonds, were executed on August 28, 2014. Construction on the Project began on September 2, 2014.

12. The Project features six parties:

- (a) CMH, the owner of the hospital site;

- (b) IO, which provides funding to CMH;
- (c) Bondfield, which is the contractor;
- (d) 2423402 Ontario Inc. ("**Project Co.**"), a special purpose vehicle which I understand was created and owned by Bondfield for the purposes of this project;
- (e) BMO, which provided financing to Project Co. for the construction of the Project;
and
- (f) Zurich, which issued the Performance Bond at issue in on this motion.

13. Although Mr. Orbach's two affidavits emphasize a multitude of agreements between these parties, Zurich is party only to the Performance Bond, the Payment Bond, and the Demand Bond (defined below) which were issued in connection with the Construction Contract. The Performance Bond and the Construction Contract referred to in the Performance Bond are the documents that govern the issues raised on the BMO Motion.

The Project Agreement

14. Project Co. entered into a project agreement dated August 28, 2014 with CMH to construct and finance the hospital facility (the "**Project Agreement**"). A copy of the Project Agreement is attached as Exhibit "G" to the First Orbach Affidavit.

15. Zurich is not a party to the Project Agreement.

16. The Project Agreement requires Project Co. to perform and complete the "Work", being the construction of the "Facility", as defined in that agreement. The Project Agreement sets out the major scheduled milestones for the Project, including:

- (a) the Scheduled Interim Completion Date (November 30, 2016);
- (b) the Scheduled Substantial Completion Date (March 31, 2019);
- (c) the Scheduled Final Completion Date (May 15, 2019); and
- (d) the Longstop Date (180 days after the Scheduled Substantial Completion Date).

17. The Project Agreement provides that CMH will make payments to Project Co. on the occurrence of each of these milestones.

18. The Project Agreement also defines certain events and situations as “Project Co. Events of Default”.

The Construction Contract

19. Project Co. and Bondfield entered into a construction contract dated August 28, 2014, which obligates Bondfield to construct the Facility (the “**Construction Contract**”). A copy of the Construction Contract is attached as Exhibit “F” to the First Orbach Affidavit.

20. Zurich is not a party to the Construction Contract.

21. Pursuant to the Construction Contract, Project Co. is obligated to pay progress payments to Bondfield as the Project progresses, according to the procedure for progress payments in the Construction Contract .

22. Section 9(c) of the Construction Contract and section 17.3 of Schedule 13 to the Construction Contract provide that:

the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is

agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.

23. The “Cost of the Financing” is defined in s. 1.64 of the Construction Contract as:

all costs and expenses incurred in connection with the Financing pursuant to the indicative financing term sheet included in the Proposal Submission and Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 8 – Financial Model and Financial Information of the Project Agreement.

The Performance Bond and Multiple Obligee Rider

24. Bondfield, as “Principal”, Project Co, as “Obligee”, and Zurich, as “Surety” entered into Performance Bond No. 6342957 dated August 28, 2014 (the “**Performance Bond**”) and its Multiple Obligee Rider (the “**Multiple Obligee Rider**”), copies of which are attached as Exhibit “M” to the First Orbach Affidavit.

25. The commercial purpose of the Performance Bond, and every performance bond like it, is to guarantee to a project owner that a contractor will perform its obligations to finish the construction and, if the contractor fails to do so, to ensure that it is done.

26. The Performance Bond provides a bond amount of \$87,377,250.00 (representing half of the “Guaranteed Price” under the Project Agreement) and provides that this is the maximum liability of Zurich. Specifically, the Performance Bond provides that “[t]he Surety shall, in no event, be liable for a greater sum than the Bond Amount.”

27. However, the Performance Bond is not an insurance contract. As in any Performance Bond, the Obligee must make available the amounts to which the contractor would have been entitled if it completed the work – what is typically referred to as the “balance of the contract price”.

28. The core obligation of Zurich under the Performance Bond is set out as follows:

Whenever the Principal shall be, and declared by the Obligor to be in default in respect of its obligations to the Obligor under the Construction Contract (a "**Contractor Event of Default**"), the Obligor having performed the Obligor's obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligor for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligor and the Surety of the lowest responsible bidder, acceptable to CMH acting reasonably, arrange for a contract between such bidder and the Obligor or between such bidder and such other party as an Additional Named Obligor shall be entitled to direct, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Construction Contract, less the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligor as a result of the Principal's default relating directly to the performance of the Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligor to the Principal under the Construction Contract; or
4. pay the Obligor the lesser of (1) the Bond Amount or (2) the Obligor's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract Price.

29. A fundamental condition to the obligation of Zurich to elect one of these four options is the pre-condition: "the Obligor having performed the Obligor's obligations under the Construction Contract".

30. The obligation to make the “Balance of the Construction Contract Price” available in option 3 arises because that option puts in place a new “completion contractor”, i.e. the contractor who is engaged to complete the project.

31. If options 1 or 2 are exercised, the Obligee has to perform the obligation under the Construction Contract, or it is in default and the Surety is discharged because the Obligee failed to perform its obligations.

32. The term “Balance of the Construction Contract Price” is used in the Performance Bond and defined as:

the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract.

33. That Multiple Obligee Rider was executed by Bondfield, as “Principal”, Project Co., as “Obligee”, Zurich, as “Surety”, and CMH and BMO (as Administrative Agent), together as “Additional Named Obligees”.

34. Paragraph 1 of the Multiple Obligee Rider provides that:

The Bond shall be and is hereby amended to add Cambridge Memorial Hospital (“**CMH**”) and Bank of Montreal, in their respective capacities as assignees of the Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.

35. Importantly, paragraph 2 of the Multiple Obligee Rider provides that where there is an event of default by Bondfield under the Construction Contract (a “**Construction Event of Default**”), and the Administrative Agent or CMH make a claim under the Performance Bond, they

shall “make available to [Zurich] in accordance with the terms of the Construction Contract the Balance of the Construction Contract Price”.

36. The Multiple Obligee Rider also requires that Zurich “acknowledges the process in the Lender’s Direct Agreement for making a claim against the Bond, including, but not limited to, the Lender’s Step in Period”.

37. It is Zurich’s position that neither the Administrative Agent nor CMH have made any proper demands under the Performance Bond.

The Lender’s Direct Agreement

38. CMH, the Administrative Agent, and Project Co. entered into the Lender’s Direct Agreement dated August 28, 2019 (the “**Lender’s Direct Agreement**”). A copy of the Lender’s Direct Agreement is attached as Exhibit “I” to the First Orbach Affidavit.

39. Zurich is not a party to the Lender’s Direct Agreement.

40. Section 6.1 of the Lender’s Direct Agreement provides that upon the occurrence of a “Project Co. Event of Default” under the Project Agreement (which also constitutes a default of the Contractor under the Construction Contract,) the Administrative Agent “shall forthwith serve notice of default on the Surety and make demand on the Surety under the Performance Bond” (emphasis added).

41. Section 7 of the Lender’s Direct Agreement also governs the Administrative Agent’s “step-in rights”, according to which it may choose to take certain enforcement actions in the event of defaults by Project Co.

42. Under Section 7.6 of the Lender’s Direct Agreement BMO expressly agreed that:

For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to Agent's obligation as an Obligee to pay the Balance of the Contract Price. If Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract, Agent shall pay to CMH an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms "Obligee", "Surety", and "Balance of the Contract Price" have the meanings given to them under the Performance Bonds.

The Contractor Direct Agreement

43. Bondfield, the Administrative Agent, and Project Co. entered into the Contractor Direct Agreement, a copy of which is attached as Exhibit "H" to the First Orbach Affidavit.

44. Zurich is not a party to the Contractor Direct Agreement.

45. Section 7.4(1) of the Contractor Direct Agreement provides, among other things, that as long as the Administrative Agent is exercising its step-in rights under the Lender's Direct Agreement, it shall perform all of the obligations of Project Co. under the Construction Contract.

Other Bonds

46. In addition to the Performance Bond, Zurich issued two further bonds in connection with the Project:

- (a) Project Co., as "Owner" or "Obligee", Bondfield, as "Contractor" or "Principal", and Zurich, as "Surety", entered into Demand Bond No. 6342958 (the "**Demand Bond**"). Project Co., as "Obligee", Bondfield, as "Principal", Zurich, as "Surety", and BMO, as "Additional Named Obligee" and "Lender", entered into a Dual

Obligee Rider to the Demand Bond. Copies of the Demand Bond and the Dual Obligee Rider are attached as Exhibit "O" to the First Orbach Affidavit.

- (b) Bondfield, as "Principal", Zurich as "Surety", and Project Co. as "Obligee" entered into Labour and Materials Payment Bond No. 6342957 (the "**Payment Bond**"). Bondfield, as "Principal", Zurich, as "Surety", Project Co., as "Obligee", and CMH and the Administrative Agent, each as an "Additional Named Obligee", entered into a Multiple Obligee Rider to the Payment Bond. Copies of the Payment Bond and its Multiple Obligee Rider are attached as Exhibit "N" to the First Orbach Affidavit.

BONDFIELD FINANCIAL DIFFICULTIES

47. It is important to note that Bondfield was the construction contractor on a number of P3 construction contracts commissioned by IO, including projects related to St. Michael's Hospital ("**SMH**") in Toronto and the Hawkesbury General Hospital ("**HGH**").

48. Those projects have a similar structure. Although there were different lending syndicates, financing was provided by several banks (including BMO) who were represented by an administrative agent. A special purpose entity was created to my knowledge by Bondfield. Finally, Zurich issued performance bonds substantially similar to the Performance Bond at issue, with Bondfield as "Principal", the relevant numbered special purpose vehicles as "Obligees" and Zurich as "Surety".

49. I know from my involvement in the three projects that Bondfield began to experience financial difficulties and each of those projects has been substantially delayed.

50. In March 2019, CCAA proceedings were initiated in respect of Bondfield, and Ernst & Young (“EY”) was appointed as Monitor of Bondfield by Order of Justice Hainey dated April 3, 2019. As set out in the Report of the Proposed Monitor dated March 5, 2019, a relevant excerpt of which is attached hereto as **Exhibit “A”**, Bondfield:

began to experience liquidity issues in 2014 and 2015 as it expanded its operations by taking on a number of P3 projects, including the Cambridge Memorial Hospital Project. By early 2018, a number of subcontractors and suppliers refused to continue to provide goods and services to Bondfield and its financial situation worsened.

51. The vast majority of Bondfield’s construction projects are bonded by Zurich. As set out in that report:

As subcontractors and suppliers began registering liens and making claims on the project payment bonds as a result of delayed payment from the Bondfield Group, **Zurich worked with the Bondfield Group to stabilize its operations and has paid over \$200 million in claims on payment bonds issued related to bonded construction projects, and to fund the operations of the Bondfield Group.** With Bondfield’s cooperation, Zurich engaged the services of [EY] to, among other things, monitor and review certain aspects of Bondfield’s business and that of other of its affiliated companies. (emphasis added)

52. The Monitor’s further reports provide further information about Bondfield’s financial condition.

Delays in the Project

53. None of the scheduled milestone dates in the Project Agreement noted above have been met, nor, as a practical matter, can they be met at this time, as described in detail below.

54. For reasons which are not known to Zurich, notwithstanding the missed milestone dates, Bondfield was permitted to continue as contractor on the Project, without any attempts to call on the Performance Bond until well into 2018.

THE BOND DEMANDS

Defaults asserted under the Agreements

55. In May 2018, the Administrative Agent and CMH for the first time asserted a number of defaults under several of the Project agreements which are for the most part irrelevant to Zurich due to the fact (as stated above) that the Performance Bond only pertains to obligations under the Construction Contract.

The first purported demand under the Performance Bond

56. On May 31, 2018, CMH wrote to Project Co., taking the position that the existence of liens, which had remained registered against the site of the Project for more than 30 days, constituted a Project Co Event of Default.

57. On May 31, 2018 CMH also wrote to the Administrative Agent notifying it, among other things, that it had sent Project Co. a notice of Project Co Event of Default that day, and requesting a response regarding the Administrative Agent's exercise of the options available to it under the Lender's Direct Agreement.

58. On June 5, 2018, the Administrative Agent wrote to Zurich enclosing the May 31, 2018 letter from CMH to the Administrative Agent, and demanding that Zurich remedy the Construction Contractor Event of Default or select and carry out one of the four options under the Performance Bond. Zurich has disputed that this was a valid demand on the Performance Bond. A true copy of this letter, and the two May 31, 2018 letters above which it enclosed, is attached hereto as **Exhibit "B"**.

59. As noted in the First Orbach Affidavit, on August 10, 2018, CMH notified Project Co. of its position that Project Co. was in default under the Project Agreement. On August 13, CMH then

wrote to the Administrative Agent providing a copy of the August 10 letter to Project Co. This triggered a 120-day period within which CMH could not exercise certain rights, including terminating the Project Agreement (the “**Notice Period**” under the Lender’s Direct Agreement). A true copy of this August 13 letter, enclosing the August 10 letter, is attached hereto as **Exhibit “C”**.

60. In or about mid-July 2018, Zurich engaged Perini Management Services (“**Perini**”) to consult with Bondfield concerning the work on this Project and the other Zurich-bonded Bondfield projects.

61. In or about early August 2018, Zurich began discussions with EllisDon, a major construction contractor, aimed at having EllisDon become the completion contractor on the Project. EllisDon cannot be formally retained unless and until appropriate funding terms can be reached. A key impediment to reaching those terms is the dispute between Zurich, BMO and CMH as to who will make available the Balance of the Contract Price, on what terms and in what amount.

62. On November 16, 2018, the Administrative Agent wrote to:

- (a) notify Bondfield of its position that Bondfield was in default of its obligations under the Construction Contract and that the Administrative Agent was entitled to, and had, made a claim under the Demand Bond, and would be making a claim under the Performance Bond. A true copy of this letter is attached hereto as **Exhibit “D”**;

- (b) Project Co., asserting that there had been a number of Events of Default under the Credit Agreement, that the Administrative Agent had made a demand under the Demand Bond on Zurich, and that the Administrative Agent would be making a demand of Zurich under the Performance Bond. This letter also notified Project Co. that the Lenders would not be making any further Loans under the Credit Agreement due to the Events of Default it had described. A true copy of this letter is attached hereto as **Exhibit “E”**.
- (c) to Zurich purporting to make a demand under the Performance Bond and Multiple Obligee Rider. It took the position in this letter that it did not need to exercise its “step-in rights” in order to make this demand. A true copy of this letter is attached hereto as **Exhibit “F”**. Again, Zurich denies that this was a valid demand on the Performance Bond.
- (d) to CMH, asserting that there had been a number of Events of Default under the Credit Agreement, that it had declared all amounts owing by Project Co, as Borrower under the Credit Agreement, owing due to these Events of Default, and that it had made a demand on Zurich under the Performance Bond. A true copy of this letter is attached hereto as **Exhibit “G”**.

63. The Administrative Agent did not exercise its “step-in rights” under the Lender’s Direct Agreement prior to purporting to make its November 16, 2018 demands. Despite purporting to make a demand under the Performance Bond and the Multiple Obligee Rider, the Administrative Agent did not make available the Balance of the Construction Contract Price to Zurich.

Late 2018 discussions on a resolution to complete the Project

64. Leading up to and following the demand which the Administrative Agent purported to make under the Performance Bond in November 2018, without stepping in, Zurich had a number of discussions with the Administrative Agent and its counsel about how to resolve the issues arising out of that purported demand.

65. The Second Orbach Affidavit dismisses the points Zurich raised at this time about the deficiencies in the Administrative Agent's purported demand under the Performance Bond and the Multiple Obligee Rider as "technical issues". In reality, due to the P3 project structure described above, the stepping in process is critical to the obligations of the Obligee and the responsibility of Zurich to respond to a claim made under the Performance Bond.

66. I met with representatives from CMH, IO, and the Administrative Agent on October 5, 2018 to discuss the status of the Project and a way to move forward on the Project toward Interim Completion, as well as involving EllisDon on the Project.

67. On October 10, 2018, the Administrative Agent wrote to CMH, IO, and Zurich to identify follow-up issues arising from the October 5 meeting, including potential sources of liquidity to fund the cost of the remaining construction work to achieve Interim Completion, revisions to the Project Schedule and the Project Agreement, a Revised Financial Model, vacating remaining liens, replacing Project Co, and performance security going forward. A true copy of this letter is attached hereto as **Exhibit "H"**.

68. Counsel to Zurich responded to this October 10 email on October 12, 2018. In this email, among other things, Zurich's position on its Performance Bond obligations was made clear:

As discussed at the meeting, one of the Multiple Dual Obligees will have to note Bondfield in default in order to trigger an obligation for Zurich to

respond under the Performance Bond. The Multiple Obligee is required to make available the Balance of the Construction Contract price to fund completion of the remaining work. We understand that the most recent Certificate of Payment (attached) identifies the Balance of Construction Price to be \$59,792,09.17 Balance Unpaid under Contract plus \$12,739,224.94 holdback together with applicable taxes which is required to be made available to the Surety for completion of the Work.

69. Zurich's counsel also provided drafts of the CMH Mitigation Funding Agreement ("MFA") and Completion Contract. A true copy of this email is attached hereto as **Exhibit "I"**.

70. On October 18, 2018 I met with counsel for the Administrative Agent to discuss certain issues prior to a demand being made under the Performance Bond.

71. On or about October 19, 2018, Project Co. granted Bondfield a release of a number of potential claims by Project Co. relating to delay in the Construction Contract, Direct Losses, Indirect Losses or Liquidated Damages under the Construction Contract, any failure to achieve the Substantial Performance Date or the Final Completion Date and any claim by CMH against Project Co. (the "**Release**"). Attached as **Exhibit "J"** is a copy of the Release.

72. It is Zurich's position that, even without the Release, amounts in respect of any such claims are not capable of being set off against the Balance of the Contract Price which Project Co. (or another Obligee) would be obliged to make available following any proper call on the Performance Bond. Nevertheless, the Release gave Zurich further comfort that the issues raised by the Administrative Agent and CMH would no longer be any practical impediment to the proper functioning of the Performance Bond. Accordingly, Zurich has been advancing funds (still subject to a reservation of rights) in advance of any agreement between the parties on their disputes, as described below.

73. On October 22, 2018, counsel for the Administrative Agent wrote to counsel for Zurich noting that a demand under the Performance Bond was going to be made and raising many of the issues which the Administrative Agent now raises on this motion, including the “sticks and bricks” argument and the argument that the Legislative Holdback is not included in the Balance of the Construction Contract Price. A true copy of this letter is attached hereto as **Exhibit “K”**.

74. Counsel for Zurich responded to this letter on October 29, 2018. A true copy of this email is attached hereto as **Exhibit “L”**.

75. In this email, counsel to Zurich noted that the purpose of the Performance Bond is to have Zurich arrange for the completion of the work on the Project in the event of a Construction Event of Default. He noted that as long as the Obligee (or Additional Named Obligee) making the demand under the Performance Bond performs the duties of Project Co., pursuant to the Construction Contract, Zurich would perform under the Performance Bond.

76. He also noted that it is a condition of the Performance Bond that the Additional Named Obligee make available the Balance of the Construction Contract Price to pay for the unfinished construction work. He noted that the Performance Bond clearly defines the “Balance of the Construction Contract Price” as “the total amount of the Guaranteed Price payable to [Bondfield] under the Construction Contract, less the amount properly paid by [Project Co.] to [Bondfield] under the Construction Contract”.

77. Counsel to Zurich clarified two additional matters in this email. First, he noted that Zurich was ready, willing and able to perform its obligations under the Performance Bond so long as one of the Additional Named Obligees made available the Balance of the Construction Contract Price under the Bond. This remains true today.

78. Second, he noted that Zurich was not requiring that the Administrative Agent or any party waive its rights to advance the legal arguments raised in its October 22 letter. This remains Zurich's position today, and as discussed below, these legal arguments ought to be made at the conclusion of the Project when they are capable of discussion or adjudication based on a full factual record.

79. Zurich's counsel requested that the Administrative Agent commit to perform the Obligee's obligations (understood to include making available the Balance of the Construction Contract Price) so that Zurich could make arrangements to complete work on the Project.

80. On November 5, 2018, I met with representatives of the Administrative Agent again to discuss outstanding issues.

81. After receiving the purported demand under the Performance Bond on November 16, counsel to Zurich responded on November 21, 2018. A true copy of this email, with appropriate redactions, is attached hereto as **Exhibit "M"**. Zurich's counsel reiterated that the party making the demand under the Performance Bond (in this case, the Administrative Agent) "has to insert itself into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond", and asked for confirmation that this had been done.

82. Zurich's counsel also asked for "confirmation that your client will make the Balance of Construction Contract Price available as calculated in the October 12, 2018 email".

83. BMO's counsel responded on November 23, 2018 with comments on the draft form of agreements (subject to client instructions). This was the first time BMO had commented on the draft agreements since Zurich's counsel sent its comments on October 12. BMO also noted that

“the Lenders have made a demand under the Performance Bond and do not agree that there are any further steps that must be taken to call on the bond.” Although the email from BMO’s counsel was marked “without prejudice”, content appears to have been no different than the discussions that continued before and after that date. A true copy of this email exchange is attached as **Exhibit “N”**.

Appointment of the Receiver and the second demand under the Performance Bond

84. On December 6, 2018, the 118th day of the Notice Period triggered by CMH’s notice of a default to Project Co on August 10, on the Application of the Administrative Agent, Justice Hainey granted an Order in this proceeding appointing a Receiver over Project Co. (the “**Receivership Order**”).

85. On December 7, 2018, counsel for the Administrative Agent wrote to counsel for Zurich noting that a demand under the Performance Bond would be made that day, and requesting a meeting among counsel on December 10, 2018 and a meeting between their clients on December 13, 2018. A true copy of this letter is attached hereto as **Exhibit “O”**.

86. On December 7, 2018, the Receiver wrote to Zurich purporting to make a demand under the Performance Bond on behalf of Project Co. A true copy of this letter and its enclosed letter from the Receiver to Bondfield is attached hereto as **Exhibit “P”**.

87. The Receiver asserted in its letter to Bondfield on December 7, 2018 that previous events of default asserted by the Administrative Agent and CMH constituted “Contractor Events of Default” under the Construction Contract, including that:

- (a) Bondfield's failure to pay Liquidated Damages when due under the Contractor Support Agreement constituted an event of default under the Construction Contract and a Liquidated Damages Default under the Demand Bond;
- (b) Bondfield's failure to remove numerous encumbrances registered against title to the Project site within the periods required under the Project Agreement, which constituted a "Project Co Construction Event of Default" under the Project Agreement and an event of default under the Construction Contract; and
- (c) Bondfield's failure to maintain the Project Schedule and achieve schedule milestones (and consequently to achieve Substantial Completion by the Longstop Date,) which has had a material adverse effect on CMH and its ability to operate the Facility constituted a "Project Co Construction Event of Default" under the Project Agreement and an event of default under the Construction Contract.

88. On December 10, 2018, counsel for the Administrative Agent wrote to counsel for Zurich. Among other things, counsel for the Administrative Agent took the position that it did not need to exercise its step-in rights under the Lender's Direct Agreement in order to make a demand under the Performance Bond and Multiple Obligor Rider. A true copy of this letter is attached hereto as **Exhibit "Q"**.

89. Counsel for Zurich responded to the Receiver, with a copy to counsel for the Administrative Agent, on December 11, 2018, acknowledging receipt of the December 7, 2018 demand under the Performance Bond and requesting confirmation that the Credit Facility remained in place and available to Project Co for use on the Project. A true copy of this letter is attached hereto as **Exhibit "R"**.

90. Counsel for the Administrative Agent responded on December 12, 2018, noting that the Credit Facility remained in place and that the Lenders were willing to make funding available to Project Co. under the Credit Facility “provided that a path forward is agreed with Zurich and the events of default under the Credit Agreement are remedied or addressed through agreement.” A true copy of this letter is attached hereto as **Exhibit “S”**.

2019 discussions on a resolution to complete the Project

91. In early 2019, Zurich and the Administrative Agent continued to work towards a negotiated resolution of the issues preventing the Project from continuing, including negotiating the MFA to that end.

92. In early 2019, leading up to and following Bondfield’s CCAA proceedings, issues arose on multiple hospital construction projects for which Bondfield was the general contractor and Zurich was surety under several construction bonds.

93. Zurich’s counsel, and counsel for the respective administrative agents in some of those other projects, was the same as they were in the CMH Project at the relevant times. One such project was the Hawkesbury General Hospital project (the “**Hawkesbury Project**”). The parties were discussing MFAs on both projects in parallel and relying on discussions related to one project in order to advance and inform discussions on the other.

94. Counsel to Zurich provided comments on a draft MFA on the CMH Project to counsel to the Administrative Agent on January 25, 2019. A true copy of this email is attached hereto as **Exhibit “T”**.

95. Counsel to Zurich wrote to counsel for the Administrative Agent on March 5, 2019. He noted that while discussions between the parties had been going on in the previous months, Zurich had already paid \$18.1 million notwithstanding Zurich's position that the demand under the Performance Bond was not valid and no arrangement for the completion of the project had been agreed upon.

96. In this letter, counsel to Zurich also noted that \$2.5 million was due and owing to Bondfield at that time in respect of work done on the Project, but that it had not been paid notwithstanding that all liens which would have prevented further advances had been removed. He requested that the Administrative Agent arrange for this amount to be paid. A true copy of this letter is attached hereto as **Exhibit "U"**.

97. On March 7, 2019, counsel for the Administrative Agent sent comments on the MFA to counsel for Zurich. On the same day, counsel for the Administrative Agent also emailed counsel for Zurich noting "that a number of the changes that show up in the blackline [of the MFA] are ones that we received from HGH's [Hawkesbury General Hospital] counsel on the Mitigation Agreement being developed in parallel, which we thought made sense to incorporate into this CHM agreement." A true copy of this email exchange, with redactions, is attached hereto as **Exhibit "V"**.

98. Counsel for the Administrative Agent responded to the March 5 letter by email on March 8, 2019, claiming that this amount (described in the email to amount to \$2.3 million) was not owing to Bondfield. A true copy of this email and the response from counsel to Zurich is attached hereto as **Exhibit "W"**.

99. I am advised by Brendan Bissell, former counsel to Zurich in this matter that he was away on a personal matter from March 11-19, 2019, and he and counsel for the Administrative Agent were in contact on March 18 regarding further discussions on the Project. A true copy of emails between counsel for the Administrative Agent and counsel for Zurich on March 18-19, 2019 is attached hereto as **Exhibit "X"**.

100. Counsel for the Administrative Agent wrote to counsel to Zurich on March 19, 2019 in response to the March 5 letter from counsel to Zurich, refusing to advance further funds. A true copy of this letter is attached hereto as **Exhibit "Y"**.

101. On March 20, 2019, Counsel for the Administrative Agent wrote to counsel to Zurich and others regarding the Administrative Agent's March 7, 2019 draft of the MFA. A true copy of this email is attached hereto as **Exhibit "Z"**.

102. On March 27, 2019, counsel to Zurich wrote to counsel for the Administrative Agent regarding its March 7, 2019 revisions to the draft MFA. In particular, he emphasized that the entire Balance of the Construction Contract Price must be made available to Zurich for it to respond to any demand under the Performance Bond. He noted that the Administrative Agent's March 7 revisions to the MFA had attempted to reduce the amount of the Balance of the Construction Contract Price to be made available to Zurich to complete the Project. A true copy of this letter is attached hereto as **Exhibit "AA"**.

103. Representatives of CMH, Zurich, IO, and the Administrative Agent met again on March 27, 2019 to discuss the MFA, where they discussed issues with construction on the Project and the terms of the MFA, among other issues.

104. In late March, Zurich was focused on preparing for the April 3, 2019 hearing in Bondfield's CCAA proceedings, mentioned above.

105. Due to the crossover of some issues on the CMH Project and the Hawkesbury Project, on April 1, 2019, Zurich responded to comments on the MFA on the Hawkesbury project which was being negotiated in parallel with the MFA on the CMH Project. A true copy of the April 1, 2019 email from Zurich counsel to counsel to the Administrative Agent is attached hereto as **Exhibit "BB"**.

106. On April 2, 2019, I attended a meeting at the offices of counsel for the administrative agent on the Hawkesbury Project (i.e., McCarthy Tétrault), to discuss matters arising out of the MFA on that project.

107. I am advised by Mr. Bissell that, thereafter, he met with Heather Meredith, counsel for the Administrative Agent, on April 3, 2019, following the hearing in Bondfield's CCAA proceedings that day, discussed above. They discussed the issues relating to the Hawkesbury Project MFA.

108. Counsel to the Administrative Agent responded on April 4, 2019, in part to allege that Zurich was requesting more than the Balance of the Construction Contract Price under the Performance Bond. A true copy of this letter is attached hereto as **Exhibit "CC"**.

109. On April 11, 2019, counsel for the administrative agent on the Hawkesbury Project sent counsel for Zurich a draft of the MFA on that project. A copy of this email, with redactions, is attached hereto as **Exhibit "DD"**.

110. On the same day, counsel for the Administrative Agent wrote to counsel for Zurich and others on April 11, 2019 attaching a revised MFA on the CMH Project, and noting that "we have

taken the initiative to revise the draft Mitigation Funding Agreement to reflect comments and discussions on a separate project". This "separate project" appears to be a reference to the Hawkesbury Project, about which comments on that project's MFA were sent earlier on the same day, as noted above. A true copy of this email is attached hereto as **Exhibit "EE"**.

111. On April 12, 2019, counsel for Zurich responded to counsel for the Administrative Agent by email, noting that the revisions to the CMH MFA sent on April 11 were "in light of what have been productive comments and discussions on a separate project", i.e., the Hawkesbury Project. A true copy of this email is attached hereto as **Exhibit "FF"**.

112. I am advised by Mr. Bissell that on April 18, he, counsel for the Administrative Agent, and counsel for CMH had a call to discuss moving forward on the Project.

113. On April 24, 2019, the Administrative Agent served its Notice of Motion for this motion.

114. On April 26, 2019, counsel for Zurich wrote to counsel for the Administrative Agent noting that, despite the purported demand under the Performance Bond on December 7, 2018, Zurich had been advancing funds under a reservation of rights to progress the work on the Project, and that it had spent in excess of \$21.6 million. Counsel for Zurich also proposed a new agreement between Zurich and Project Co. designed to provide a framework for the Project to proceed. A true copy of this letter is attached hereto as **Exhibit "GG"**.

115. Shortly thereafter, Zurich retained new counsel at Lenczner Slaght to address this motion.

116. Counsel for Zurich wrote to counsel for CMH and others on May 3, 2019, assuring CMH that, without prejudice to Zurich's ultimate position on its obligations under the applicable bonds, it would continue to fund work on the Project to Interim Completion, and noting that these funds

are being (and have been) paid for the benefit of CMH as a gesture of good faith and on a full reservation of rights basis. A true copy of this email is attached hereto as **Exhibit “HH”**

117. Counsel for the Administrative Agent wrote to counsel for Zurich on May 6, 2019, in part disputing that there was *any* obligation to make available the Balance of the Construction Contract Price and rejecting Zurich’s latest draft of the MFA. A true copy of this letter is attached hereto as **Exhibit “II”**.

ZURICH’S GOOD FAITH EFFORTS TO ADVANCE THE PROJECT

118. Mr. Orbach complains that Zurich has not acted in good faith due to delays he claims have arisen in the context of the above negotiations over the MFA. As noted above, Zurich’s position is that there has not been a valid call on the Performance Bond, including because no party has committed to making available the Balance of the Contract Price.

119. The Administrative Agent, although purporting to make a demand under the Performance Bond in November 2018, refused to step in or to make available the Balance of the Construction Contract Price. When the Receiver made the demand under the Performance Bond in December 2018 on behalf of Project Co., similarly Project Co. did not make available the Balance of the Construction Contract Price.

120. As such, it is Zurich’s position that it is not obliged to take any action under the Performance Bond.

121. Despite this, Zurich has been actively moving work on the Project forward in good faith. Zurich took these steps before any demand was made on the Bond, in mid-2018. While Zurich could have waited for the Project to deteriorate further, it took action to assist. It retained Perini as

consultant and engaged EllisDon in discussions as potential replacement contractor in the summer of 2018, as described above.

122. Since that time, Zurich has been expending significant funds to do so, on a without prejudice basis. Zurich remains ready, willing, and able to perform under the Performance Bond, provided that the requirement under the Performance Bond to make the Balance of the Construction Contract Price available to Zurich.

123. In total, Zurich has spent in excess of \$21 million since it began its involvement in mid-2018. In addition, Zurich has paid over \$200 million on all of Bondfield's Zurich-bonded projects.

124. The Second Report of the Monitor dated May 24, 2019 in the Bondfield CCAA proceedings describes the result of Zurich's efforts in this way:

The Applicants [the Bondfield Group], with the assistance of Perini Management Services Inc. (advisor to Zurich) and the Monitor, continue to advance various construction projects.

Pursuant to the Initial Order, the Applicants, with the assistance of the Monitor, continue to process disbursements to subcontractors and suppliers and other parties, primarily funded by advances from Zurich pursuant to both its bonded obligations and the Zurich DIP Facility [interim financing facilities provided by Zurich in Bondfield's CCAA proceedings]. There has been no significant disruptions in the supply of goods and services to the Applicants during the post-filing period.

A true copy of the relevant excerpt of the Second Report of the Monitor dated May 24, 2019, is attached hereto as **Exhibit "JJ"**.

125. I have personally been actively engaged on all of the Zurich-bonded Bondfield projects. I am aware personally and/or from Paul Bordieri of Perini, that Perini has overseen and undertaken significant work on the CMH Project, including:

- (a) **Subcontractor re-engagement:** Many subcontractors had left the Project by the time Perini was engaged due to non-payment by Bondfield. They were refusing to perform any further work, including, in some cases, rectification of deficiencies, unless they were paid in full. Many of those subcontractors were also subcontractors on other Zurich-bonded projects for Bondfield and insisted on complete payment on all outstanding projects before resuming work. In order to get the Project back on track, Perini and Zurich's claims adjusters at BBCG reviewed and approved approximately \$13 million in Payment Bond claims to various subcontractors and suppliers. This effort resulted in bringing subcontractor accounts current and subcontractors returning on site on the Project by November-December 2018.
- (b) **Phase 2 Work to move the Project toward Interim Completion, including:**
 - (i) HVAC and plumbing equipment start-up and commissioning;
 - (ii) Sprinkler system and fire pump start-up and commissioning;
 - (iii) Temporary Measure N vestibules added between the old and new CMH building wings in order to allow occupancy for the new wing;
 - (iv) Repair of resilient sheet flooring defects and replacement of resilient sheet flooring;

- (v) Repairing epoxy terrazzo floor finishing defects on 15,000 square feet of flooring;
 - (vi) Repairing exterior building envelope defects consisting of multiple breaches in the air and vapor barrier and exterior insulation;
 - (vii) repairing intumescent paint defects on the structural steel at the link bridges between the old and new wings of the hospital;
 - (viii) Repairing cracks in the poured floors of the Operating Rooms; and
 - (ix) repairing multiple other major and minor deficiencies on the deficiency lists.
- (c) **Preparations for Phase 3 Work post-Interim Completion:**
- (i) Subject principally to disputes regarding deficiencies (described further below), the Project is moving towards Interim Completion and then into Phase 3;
 - (ii) Perini and Vertex, a second consultant paid by Zurich, have completed ratification agreements with 13 subcontractors, with more expected before Interim Completion, that will allow for the assignment of the various subcontractors and their Bondfield contractual scope to EllisDon so that EllisDon can be retained as the contractor on Phase 3.
 - (iii) Phase 3 of the Project is estimated to take over 30 months to complete and consists of complicated renovation work in the existing B and C wings of

the hospital. There are numerous phases involved in order to complete the work without unduly disrupting hospital operations. As a result, there is a significant amount of planning and coordination that is taking place between Perini, EllisDon and CMH so that all the necessary planning and sequencing is developed and agreed upon before Phase 3 begins. Meetings have been held starting in February 2019 and occur every other week and will continue for several weeks more until all plans and schedules are settled.

126. Zurich has been paying EllisDon monthly for this preparatory work in order to keep the Project progressing toward Phase 3. In total, Zurich has paid EllisDon over \$159,000 since its engagement.

Continued Deficiencies Identified by CMH

127. Much of the Phase 2 work being done on the Project relates to “deficiencies” identified by CMH and which CMH has insisted be repaired before the project can proceed to Interim Completion. Perini has been assisting with the work to fix these deficiencies as CMH identifies them, and Zurich has been funding these deficiency repairs. Many of the Phase 2 tasks described above resulted from CMH identifying such deficiencies. One of the most recent deficiency lists identifies over four thousand items, many of which CMH takes the position must be rectified before Interim Completion can be reached.

128. For example, two recently identified deficiencies have resulted in CMH requiring repairs to the A Wing’s exterior “bird screen”, an exterior ceramic panel system, and to clean the entirety of the ducts in the A Wing.

129. The duct cleaning issue illustrates the way in which delays compound other delays.

130. I understand from Perini that the ducts in the under-construction A Wing were cleaned prior to the start-up and balancing of the HVAC systems between July 2017 and May 2018. Now as the project moves towards Interim Completion, the building envelope is finished and the HVAC systems must be used during construction. CMH has had the HVAC ducts inspected and alleged some form of contamination in several locations in the ductwork. Perini has indicated that it would assist (and Zurich would pay for) further cleaning of those identified locations.

131. CMH has now insisted that that prior to Interim Completion all of the ductwork must be cleaned due to dust in other areas of the ductwork. If that cleaning is undertaken, the HVAC systems will have to be shut down, halting all construction on the Project. Perini's best estimate is that the full-scale cleaning that CMH has demanded will take upwards of four months to complete, during which no other construction can proceed. Mr. Bordieri advises me that it is inevitable that during any resumed construction activities thereafter (and indeed normal operation of the HVAC systems after occupation) further dust will settle in the ductwork.

132. Each new identified deficiency adds additional cost to the Project and, as in such cases, adds to the time that it will take to accomplish Interim Completion, and ultimately to finish the Project. New deficiencies are regularly added to the deficiencies list, making it impossible for Perini to accurately price or time the remainder of Phase 2 or the remainder of the Project.

133. I attended a meeting with Patrick Gaskin, CEO of CMH on May 15, 2019. Mike Prociw, Vice President, Finance & Corporate Service, CFO, and CIO of CMH sent an email following up on that meeting on May 31, 2019 in which he identified 10 "critical issues" needing to be rectified

prior to Interim Completion. A true copy of this email, with redactions, is attached hereto as **Exhibit “KK”**.

134. As a result, the current expected date for Interim Completion on the Project is unknown.

135. Due in part to the continually changing scope of the Project, any set-offs or damages asserted by CMH or others (to the extent they are even payable) cannot be quantified at present for the Project.

136. As detailed further below, Zurich has complied fully with the demands made under the Demand Bond and the Payment Bond, and paid out significant sums under both bonds.

137. The Balance of the Construction Contract Price is unlikely to cover the actual costs that Zurich will have to incur to finish the Project. It is this (and only this) shortfall that Zurich as a Surety is intended to satisfy.

138. As noted above, Zurich has spent in excess of \$21 million on the Project between when its involvement began in mid-2018 and April 2019. This includes:

- (a) over \$4 million paid under the Demand Bond; and
- (b) over \$13 million paid under the Payment Bond and to EllisDon.

139. I understand that the Monitor of Bondfield will be providing a Report in these proceedings which will update these numbers.

140. To date, the Administrative Agent has made ten demands under the Demand Bond to Zurich. Zurich has paid the Administrative Agent in response to all ten of these demands, for a cumulative total of over \$4 million. A summary of these demands and payments is as follows:

Summary of Demand Bond Payments				
No.	Date	Amount	Cumulative Total	Balance Available
1	3-Aug-2018	\$ 549,693.00	\$ 549,693.00	\$ 8,188,032.00
2	14-Sep-2018	\$ 471,028.46	\$ 1,020,721.46	\$ 7,717,003.54
3	2-Oct-2018	\$ 298,295.83	\$ 1,319,017.29	\$ 7,418,707.71
4	5-Nov-2018	\$ 451,916.92	\$ 1,770,934.21	\$ 6,966,790.79
5	7-Dec-2018	\$ 450,583.83	\$ 2,221,518.04	\$ 6,516,206.96
6	4-Jan-2019	\$ 433,747.97	\$ 2,655,266.01	\$ 6,082,458.99
7	5-Feb-2019	\$ 427,745.12	\$ 3,083,011.13	\$ 5,654,713.87
8	5-Mar-2019	\$ 324,090.36	\$ 3,407,101.49	\$ 5,330,623.51
9	2-Apr-2019	\$ 348,618.41	\$ 3,755,719.90	\$ 4,982,005.10
10	2-May-2019	\$ 371,997.31	\$ 4,127,717.21	\$ 4,610,007.79

141. To date, Zurich has paid in excess of \$13 million to subcontractors and suppliers to respond to demands made under the Payment Bond, and to EllisDon.

142. The balance of the funds expended by Zurich, under its reservation of rights, are on account of any obligations that it may have to make payments under the Performance Bond.

143. I am informed by Mr. Bordieri that Perini's best estimate of the Balance of the Construction Contract Price owing under the Performance Bond, is as follows at this time:

	Item	Total
1	Guaranteed Price	\$174,754,500
2	Approved Change Orders (based on Bondfield billing records)	\$3,293,597
3	Amended Contract Price (3 = 1+2)	\$178,048,097
4	Total Amount Paid to Bondfield Inclusive of HST	\$129,158,836
5	Current Legislative Holdback	\$13,023,923
6	Total Legislative Holdback	\$17,804,810
7	HST Payable on Guaranteed Price	\$22,718,085
8	HST Payable on Approved Change Orders	\$428,168
	Balance of Original Contract Funds (3 + 7 + 8 - 4) (collectively "Remaining Original Contract Balance")	\$72,035,514

144. I swear this affidavit in support of Zurich's position on the BMO Motion and the Zurich Motion and for no other or improper purpose.

SWORN BEFORE ME at Ft Lauderdale
in the State of Florida on this 31st day of May,
2019

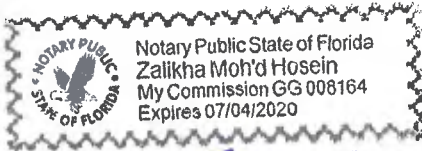


Notary Public



ADRIAN BRAGANZA


5-31-19



5-31-19

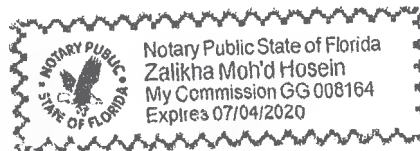
TAB A

This is **Exhibit "A"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FLORIDA
COUNTY: BROWARD



5-31-19

Court File No. -----

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT OF
BONDFIELD CONSTRUCTION COMPANY LIMITED, 352021 ONTARIO LIMITED,
950504 ONTARIO INC., 2433485 ONTARIO INC., 2433486 ONTARIO INC.**

**REPORT OF THE PROPOSED MONITOR
March 5, 2019**

INTRODUCTION

1. Ernst & Young Inc. (“**EY**” or the “**Proposed Monitor**”) understands that Bondfield Construction Company Limited, 352021 Ontario Limited, 950504 Ontario Inc., 2433485 Ontario Inc., and 2433486 Ontario Inc. (each an “**Applicant**”, and collectively, the “**Applicants**”) have brought an application (the “**CCAA Application**”) before this Court returnable on March 6, 2019, seeking an Initial Order (the “**Proposed Initial Order**”) pursuant to the Companies’ Creditors Arrangement Act (“**CCAA**”) to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs. The Applicants propose that EY be appointed as Monitor of the Applicants in these CCAA proceedings (in such capacity, the “**Monitor**”).
2. This report (the “**Report**”) has been prepared by the Proposed Monitor prior to its appointment as Monitor, should this Court grant the Proposed Initial Order, to provide information to this Court for its consideration in respect of the Applicants’ CCAA Application.

PURPOSE

3. The purpose of this report is to provide information to the Court on:
 - a) EY's qualifications to act as Monitor;
 - b) an overview of the Applicants;

- c) background on the circumstances leading to the Applicants' decision to commence CCAA proceedings;
- d) an overview of the Applicants' thirteen week cash flow forecast on a consolidated basis for all the Applicants (the "**Cash Flow Forecast**") and the Proposed Monitor's comments regarding the reasonableness thereof; and
- e) certain relevant matters about the relief sought in the Proposed Initial Order.

TERMS OF REFERENCE AND DISCLAIMER

4. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third party sources (collectively, the "**Information**"). Except as described in this Report in respect of the Cash Flow Forecast:
 - a) the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
 - b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
5. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
6. Unless otherwise indicated, the Proposed Monitor's understanding of factual matters expressed in this Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Proposed Monitor.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

EY'S QUALIFICATION TO ACT AS MONITOR

8. EY is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). EY is not subject to any of the restrictions set out in section 11.7(2) of the CCAA on who may be appointed as Monitor.

9. As discussed in further detail later in this report, EY already has a detailed understanding of the Applicants' operations, construction projects and cash flow, and will be in a position to very quickly and seamlessly perform its responsibilities as Monitor, if appointed. EY was initially engaged by Zurich (as defined below) in connection with its dealings with the Applicants. If appointed as Monitor, EY would perform that role independently and without any ongoing engagement with Zurich.
10. The Proposed Monitor has retained Norton Rose Fulbright Canada LLP to act as its independent counsel.

OVERVIEW OF THE APPLICANTS

Overview

11. This Report should be read in conjunction with the Affidavit of Steven Aquino sworn March 5, 2019 (the "**Aquino Affidavit**") for additional background and financial information with respect to the Applicants.
12. The Applicants, collectively referred to as the "**Bondfield Group**", consist of the following entities:
 - a) Bondfield Construction Company Limited ("**BCCL**");
 - b) 352021 Ontario Limited ("**352021**");
 - c) 950504 Ontario Inc. ("**950504**");
 - d) 2433485 Ontario Inc. ("**EOK ProjectCo**"); and
 - e) 2433486 Ontario Inc. ("**Sheridan ProjectCo**").
13. All of the legal entities comprising the Bondfield Group are private companies formed under the *Business Corporations Act* (Ontario) and are owned, directly or indirectly, by various members of the Aquino family. A copy of the Bondfield Group organization chart is attached as Exhibit "A" to the Aquino Affidavit, and is reproduced herein as Appendix 'A' to this Report.
14. The principal operating entity within the Bondfield Group is BCCL, which is a full service construction company operating throughout Ontario. It has over 30 active bonded construction projects, having an aggregate value in excess of \$1 billion, across multiple sectors including health care, schools and universities, transportation, offices and recreational centres. Examples of significant construction projects include the Union Station revitalization project in Toronto, the construction of the Ed Sackfield Arena in Richmond Hill, the relocation and expansion of the new Integrated Healthcare Services Centre in CFB Petawawa, the construction of the new Kingston Intermediate Secondary School in Kingston, and various projects for the Toronto Transit Commission. The principal surety that provided virtually all of the various bonds on BCCL's bonded construction projects is Zurich Insurance Company Ltd. ("**Zurich**").

15. 352021 is a legal entity that was set up solely for the purposes of processing payroll for the various unionized employees who provide skills and labour on the Bondfield Group's various construction projects.
16. 950504 is a holding company that owns a 5% interest in a property located in Innsfil, Ontario.
17. EOK ProjectCo is a special purpose entity, wholly owned by BCCL, that was created for the purposes of the private public partnership ("P3") redevelopment project of the ErinoakKids Centre for Treatment and Development facilities in Mississauga, Brampton and Oakville.
18. Sheridan ProjectCo is a special purpose entity, wholly owned by BCCL, that was created for the purposes of the P3 Sheridan College HMC Phase 2 project.
19. Altogether the Bondfield Group employs approximately 330 employees and independent contractors in the province of Ontario, including approximately 200 unionized employees.

Summary of the Applicants' Financial Position

20. Copies of the Applicants' consolidated unaudited and draft financial statements for the year ended December 31, 2017 are attached as Exhibit "C" to the Aquino Affidavit. These financial statements however include certain non-applicant entities as well as entities that are currently under receivership proceedings (as discussed later herein). In addition to these fiscal 2017 financial statements, a copy of BCCL's unaudited, non-consolidated draft financial statements for the quarter ended March 31, 2018 are attached as Exhibit "D" to the Aquino Affidavit.
21. The Aquino Affidavit describes in further detail the Applicants' financial position.
22. Further, as set out in the Aquino Affidavit, Management has concerns with respect to certain transactions and documents prepared by a former director in charge of the Bondfield Group's financial affairs. As such, the accuracy of the Bondfield Group's financial statements is not certain.

BACKGROUND OF THE CURRENT SITUATION AND THE DECISION TO COMMENCE INSOLVENCY PROCEEDINGS

23. The Bondfield Group began to experience liquidity issues in 2014 and 2015 when it began to expand its operations by taking on a number of P3 projects. While the Bondfield Group was able to obtain short term replacement financing to resolve certain of these issues, by early 2018, the financial condition of the Bondfield Group had deteriorated. Many subcontractors and other vendors refused to continue to provide services and goods, and progress on several construction projects considerably slowed or came to a standstill. These constructions delays then exacerbated the Bondfield Group's financial situation as project owners began to hold payments on the project receivables.

24. The vast majority of the Bondfield Group's construction projects are bonded by Zurich. As subcontractors and suppliers began registering liens and making claims on the project payment bonds as a result of delayed payment from the Bondfield Group, Zurich worked with the Bondfield Group to stabilize its operations and has paid over \$200 million in claims on payment bonds issued related to bonded construction projects, and to fund the operations of the Bondfield Group. These payments, among other assistance provided by Zurich, enabled the Bondfield Group to restore progress to many of its construction projects as subcontractors returned to work and suppliers agreed to continue providing materials.
25. As a result, Zurich, with the cooperation of the Bondfield Group, engaged the services of EY to, among other things, monitor and review certain aspects of the business of BCCL, 352021 and other affiliated companies.
26. Under the terms of an August 2018 agreement between Zurich and the Applicants, EY began to monitor the cash position of BCCL, 352021, 1033803 Ontario Inc. ("**Forma-Con**") (an affiliated entity which performs concrete forming and finishing work on various bonded and non-bonded projects), B.B.M. Excavation Company Limited (a joint venture partially owned by BCCL which provides excavation services on a number of projects) and other affiliates. EY is also reviewing the financial records related to past financial transactions. In addition, EY reviews the disbursements of these entities as presented through proposed disbursement lists each day or as required and accompanied by supporting documentation. Beginning in November 2018, a notional subledger, which records the receipts and disbursements (directly attributable or allocated) for every construction project, also began to be provided and continues to be provided currently on a weekly basis. EY reviewed and continues to review this notional subledger in detail with the Bondfield Group's financial advisor, which is also provided to KSV Advisory Inc.
27. As part of the cash position monitoring, disbursement review and review of the cash flow forecasts provided by the Bondfield Group, EY, with the assistance of the Bondfield Group's financial advisor, reviews the estimated funding shortfall on a regular basis. Zurich then provides the additional required funds to pay for services and materials recommended by EY.
28. In July 2017, BCCL had entered into a credit agreement with Bridging Finance Inc. ("**Bridging**") which provided for a non-revolving demand loan in an amount of up to \$60 million and a revolving demand loan in an amount of up to \$20 million (the "**Bridging Loan**"). BCCL's obligations under the Bridging Loan are the subject of, among other things, a general security agreement with BCCL. These obligations under the Bridging Loan are further the subject of guarantees and security agreements from 352021 and 950504, and guarantees from certain non-applicant entities, individuals, and certain entities currently subject to their own receivership proceedings including Forma-Con.
29. On October 1, 2018, Bridging issued demand letters and section 244 notices under the *Bankruptcy and Insolvency Act* to BCCL and each of the other Applicants and other legal entities or persons who were guarantors of the Bridging Loan. Subsequently on November 15, 2018, Bridging filed an application to appoint a receiver over all of the

TAB B

This is **Exhibit "B"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FLORIDA
COUNTY: BROWARD



5-31-19

June 5, 2018

Via Courier

Zurich Insurance Company Ltd.

Surety Department
First Canadian Place,
100 King Street West Suite 5500, P.O. Box 290
Toronto, ON M5X 1C9

Dear Sirs/Mesdames:

Re: Demand Upon Performance Bond No. #6342957 dated August 28, 2014, together with the Multiple Obligee Rider thereto (collectively, the "Bond")

Bank of Montreal, in its capacity as administrative agent (the "**Agent**"), is an Obligee under the above-noted Bond. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Bond.

Please find enclosed a copy of a letter dated May 31, 2018 received by the Agent from Cambridge Memorial Hospital ("**CMH**"), pursuant to which CMH notified the Agent of the occurrence of a "Project Co Event of Default" under the Project Agreement (the "**Project Agreement**") dated August 28, 2014 between CMH and 2423402 Ontario Inc. ("**Project Co**"). Attached to that letter is a copy of the notice of the "Project Co Event of Default" delivered concurrently by CMH to Project Co, as well as copies of the applicable construction lien registrations and Statement of Claim referred to in the notice to Project Co. The occurrence of such "Project Co Event of Default" under the Project Agreement constitutes a Contractor Event of Default by the Principal under the Construction Contract.

The Principal is, and has been declared by the Obligee to be, in default in respect of its obligations under the Construction Contract, and the Obligee has duly performed all of its obligations thereunder. Accordingly, we hereby demand that the Surety promptly remedy the Construction Contractor Event of Default, or promptly select and carry out one of the other specified options available to the Surety pursuant to the Bond.

Yours truly,

BANK OF MONTREAL, as Agent

By: 

Name:

Title:

Eden Orbach

Senior Manager

Encl.

cc: Steve Aquino, Bondfield Construction Company Ltd.
John Aquino, 2423402 Ontario Inc.
Mike Prociw, Cambridge Memorial Hospital



700 Coronation Blvd.
Cambridge, ON
N1R 3G2
www.cmh.org

Ref# CRP18_0103

Sent Via Fax and E-Mail

May 31, 2018

Mr. James Di Giacomo
Managing Director, Underwriting and Syndications
Corporate Finance Division
BMO Bank of Montreal
11th Floor, 100 King Street West
Toronto, ON M5X 1A1

Dear Mr. Di Giacomo:

Re: Cambridge Memorial Hospital ("CMH") Capital Redevelopment Project (the "Project")

Re: Project Agreement dated August 28, 2014 between CMH and 2423402 Ontario Inc. ("Project Co")

Re: Lender's Direct Agreement dated August 28, 2014 ("LDA") among CMH, Bank of Montreal, and Project Co

Re: Notice of Project Co Event of Default re Construction Liens

This letter constitutes the Project Co Default Notice referred to in Section 6.1 of the LDA and is the second Project Co Default Notice issued in relation to the Project.

Attached to this letter is a copy of the notice of Project Co Event of Default delivered to Project Co in accordance with Section 26.3(a) of the Project Agreement, together with the attachments referred to in that notice.

CMH acknowledges the terms of Section 6.2 of the LDA and, pursuant to Section 6.2(a) of the LDA, provides the following information.

Background

1. The Scheduled Interim Completion Date and the Scheduled Substantial Completion Date are November 30, 2016 and March 31, 2019, respectively.
2. Interim Completion has not yet been achieved. The latest schedule delivered by Project Co indicates that Interim Completion will be achieved on July 26, 2018 (20 months late). Further, over the past 6 months Project Co has been unable to "catch up" to the Interim Completion Date – with the passing of each month Project Co's forecasted Interim Completion Date is pushed back a corresponding month:

Date	Sch No.	Project Co Planned Int Completion Date
November 2017	29	February 14, 2018
December 2017	30	February 28, 2018
January 2018	31	April 16, 2018

Date	Sch No.	Project Co Planned Int Completion Date
February 2018	32	May 11, 2018
March 2018	33	June 20, 2018
April 2018	34	July 26, 2018

3. Corresponding to the extensive schedule delays, Project Co's activities on the Project have steadily decreased. Project Co's reduction of its operations is clearly seen in Project Co's recent applications for payment which, instead of reflecting a level of activity that would be expected of a contractor working toward Interim Completion, are steadily decreasing. Set out below are Project Co's actual applications for payment submitted over the past 6 months, as compared to the scheduled draw applications for the 6 month period preceding the November 30, 2016 Scheduled Interim Completion Date:

Scheduled Draws for the 6 Months Prior to Interim Completion		Actual Draws Past 6 Months		Actual vs Scheduled (as %)
Month	Draw Amount	Month	Draw Amount	
June 2016	\$3,610,494	November 2017	\$581,737	16.1%
July 2016	\$2,860,326	December 2017	\$425,231	14.9%
August 2016	\$2,071,656	January 2018	\$299,119	14.4%
September 2016	\$1,254,420	February 2018	\$184,687	14.7%
October 2016	\$1,169,796	March 2018	\$27,241	2.3%
November 2016	\$1,135,200	April 2018	\$45,225	4.0%
TOTAL	\$12,101,892	TOTAL	\$1,563,240	12.9%

4. In addition to the issues noted above relating to schedule and the slowdown in Project Co's activity on the Project, a number of Project Co Parties have recently registered construction liens.

Notice of Project Co Event of Default

5. Section 26.1(a)(viii) of the Project Agreement defines a Project Co Event of Default to include Project Co failing to remove a lien within 30 days of the earlier of (a) the registration of the lien against title to the Site; and (b) the date on which Project Co or any Project Co Party knew or ought to have known about the existence of the lien.
6. On:
- (a) April 25, 2018 a construction lien in the amount of \$290,544.37 was registered against the title to the Site by Roque Roofing Inc., one of the Project Co Parties;

- (b) April 26, 2018 a construction lien in the amount of \$2,129,595.74 was registered against the title to the Site by P.J. Daly Contracting Ltd., one of the Project Co Parties;
- (c) May 30, 2018 CMH was served with a Statement of Claim issued on May 25, 2018 by P.J. Daly Contracting Ltd. to enforce the latter's lien, in which P.J. Daly Contracting Ltd. claims damages in the amount of \$2,129,595.85.

Copies of the liens and the Statement of Claim are attached.

- 7. As of May 28, 2018, more than 30 days after their registration, both liens remain registered against the title to the Site. This constitutes a Project Co Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement.
- 8. On May 31, 2018 CMH issued a notice of Project Co Event of Default, copy attached.

Going Forward

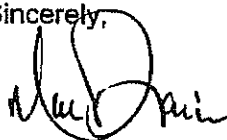
- 9. CMH believes that Project Co will not achieve Interim Completion by Project Co's current projected date of July 26, 2018, and will not achieve Substantial Completion by the Longstop Date.
- 10. Having regard to the amounts Project Co owes to trades, as exemplified by the two liens which remain registered against the title to the Site (in excess of \$2.4 million in the aggregate) and the Statement of Claim which was recently served, and having regard to Project Co's lack of activity on the Project and the other issues which have come to light with Project Co's work to date, identified in CMH's recent correspondence dated April 18 and May 4, 2018, CMH continues to have ongoing serious concerns regarding Project Co's operations and its ability to complete the Project.
- 11. CMH remains concerned about the work to be undertaken after Interim Completion (Phase 3), which will include substantial renovations in the existing hospital facilities. CMH has made it clear to Project Co that it will not allow Project Co to start any Phase 3 work unless and until Project Co has complied with its obligations under the Project Agreement to deliver detailed phasing schedules that clearly demonstrate that patients and staff will be kept safe and free of risk and that the impact to CMH's clinical delivery activities will be minimized.

A copy of this letter is being directed to Project Co in accordance with Section 6.1 of the LDA.

CMH reserves all of its rights and remedies under the LDA and the Project Agreement, and looks forward to hearing from you regarding the Agent's exercise of the options available under the LDA regarding this Project Co Default Notice.

Capitalized terms not defined in this letter shall have the meanings given to them in the LDA.

Sincerely,



Mike Prociw
Vice President, Finance and Corporate Services, CFO and CIO

Attachments

- c. Denise McNally
Infrastructure Ontario
- c. Danny Polny
Infrastructure Ontario
- c. John Aquino
2423402 Ontario Inc.



700 Coronation Blvd.
Cambridge, ON
N1R 3G2
www.cmh.org

Ref# CRP18_0102

Sent Via Fax and E-Mail

May 31, 2018

2423402 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8

Attention: John Aquino

Dear Mr. Aquino:

- Re: Cambridge Memorial Hospital ("CMH") Capital Redevelopment Project (the "Project")**
- Re: Project Agreement dated August 28, 2014 (the "Project Agreement") between CMH and 2423402 Ontario Inc. ("Project Co")**
- Re: Notice of Project Co Event of Default re Construction Liens**

This letter constitutes notice of Project Co Event of Default and is being delivered pursuant to Section 26.3(a) of the Project Agreement.

On:

- (a) April 25, 2018 a construction lien in the amount of \$290,544.37 was registered against the title to the Site by Roque Roofing Inc., one of the Project Co Parties;
- (b) April 26, 2018 a construction lien in the amount of \$2,129,595.74 was registered against the title to the Site by P.J. Daly Contracting Ltd., one of the Project Co Parties;
- (c) May 30, 2018 CMH was served with a Statement of Claim issued on May 25, 2018 by P.J. Daly Contracting Ltd. to enforce the latter's lien, in which P.J. Daly Contracting Ltd. claims damages in the amount of \$2,129,595.85.

Copies of the above-referenced liens and Statement of Claim are attached.

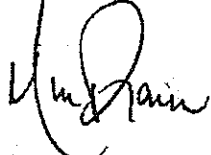
As of May 28, 2018, more than 30 days after their registration, both liens remain registered against the title to the Site. This constitutes a Project Co Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement.

A copy of this letter is being directed to the Agent in accordance with Section 26.3(a) of the Project Agreement and the terms of the Lender's Direct Agreement.

Capitalized terms not defined in this letter have the meanings given to them in the Project Agreement.

CMH continues to reserve all of its rights and remedies under the Project Agreement.

Yours truly,



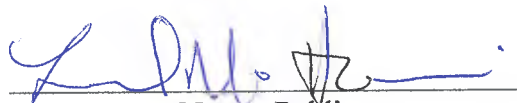
Mike Prociw,
Vice President, Finance and Corporate Services, CFO and CIO

Attachments

- c. James Di Giacomo
BMO Bank of Montreal
- c. Steve Aquino
Bondfield Construction Company Ltd.
- c. Denise McNally
Infrastructure Ontario
- c. Danny Polny
Infrastructure Ontario
- c. Ronald Mandowsky
Pelican Woodcliff

TAB C

This is **Exhibit "C"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19



700 Coronation Blvd.
Cambridge, ON
N1R 3G2
www.cmh.org

Ref# CRP18_0145

August 13, 2018

Sent via Fax and Email

Mr. James Di Giacomo
Managing Director, Underwriting and Syndications
Corporate Finance Division
BMO Bank of Montreal
11th Floor, 100 King Street West
Toronto, Ontario, M5X 1A1

Dear Mr. Di Giacomo:

Re: Cambridge Memorial Hospital ("CMH") Capital Redevelopment Project (the "Project")
Re: Project Agreement dated August 28, 2014 between CMH and 2423402 Ontario Inc. ("Project Co")
Re: Lender's Direct Agreement dated August 28, 2014 ("LDA") among CMH, Bank of Montreal, and Project Co
Re: Notice of Project Co Events of Default

This letter constitutes the Project Co Default Notice referred to in Section 6.1 of the LDA.

Attached to this letter is a copy of the notice of Project Co Events of Default delivered to Project Co on August 10, 2018 in accordance with Section 26.3(a) of the Project Agreement.

The attached notice sets out the nature of the alleged default as required by Section 6.2(a) of the LDA. In addition to the information contained in the attached notice, we can advise that this morning (approximately 9:05am) there were only 11 workers on Site.

CMH reserves all of its rights and remedies under the LDA and the Project Agreement, and looks forward to hearing from you regarding the Agent's exercise of the options available under the LDA regarding this Project Co Default Notice.

Capitalized terms not defined in this letter shall have the meanings given to them in the LDA.

Sincerely,

Mike Prociw
Vice President, Finance and Corporate Services, CFO and CIO

Attachment

- c. Denise McNally
Infrastructure Ontario
- c. Danny Polny
Infrastructure Ontario
- c. John Aquino
2423402 Ontario Inc.



Ref# CRP18_143

August 10, 2018

Sent Via Fax and E-Mail; Original sent by Regular Mail

2423402 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8

Attention: John Aquino

Dear Mr. Aquino:

Re: Cambridge Memorial Hospital ("CMH") Capital Redevelopment Project (the "Project")
Re: Project Agreement dated August 28, 2014 (the "Project Agreement") between CMH and 2423402 Ontario Inc. ("Project Co")
Re: Notice of Events of Default

This letter constitutes notice of several separate and distinct Project Co Events of Default and is being delivered pursuant to Section 26.3(a) of the Project Agreement. This letter is in addition to and in no way overrides or supplants any of CMH's prior written notices of prior Project Co Events of Default.

CMH provides notice of the following:

1. A Project Co Event of Default pursuant to Section 26.1(a)(ii) of the Project Agreement, in that Project Co will fail to achieve Substantial Completion by the Longstop Date.

Project Co has not yet achieved Interim Completion and the Project is now 20 months beyond the Scheduled Interim Completion Date of November 30, 2016. Project Co's latest schedule dated July 5, 2018 estimates that Interim Completion will be achieved on September 7, 2018 and that Substantial Completion will be achieved February 17, 2021.

The Scheduled Substantial Completion Date is March 31, 2019 and the Longstop Date is September 27, 2019. By Project Co's own schedule, it has acknowledged that it cannot achieve Substantial Completion until more than 16 months after the Longstop Date.

Given the amount of work still required to achieve Interim Completion, and the current overall state of the Project, it is evident that Substantial Completion is not achievable and will not be achieved by the Longstop Date, as acknowledged by Project Co in its most recent schedule.

2. A Project Co Event of Default pursuant to Section 26.1(a)(i)(B) of the Project Agreement, in that Project Co has ceased or suspended performing a substantial portion of its business, which has and continues to have a material adverse effect on Project Co's ability to perform its obligations under the Project Agreement.

Project Co was incorporated as a single purpose entity and has been represented in the Project Agreement to be wholly owned by Bondfield Construction Company Limited (the

Contractor under the Project Agreement). Project Co's sole business is carrying out its obligations under the Project Agreement and completing the Project. As confirmed in Section 11.4(a) of the Project Agreement, Project Co was selected to perform the Work, in part, because of its covenant to achieve all key milestone dates, including Interim Completion and Substantial Completion, which were, as set out in Section 11.4(a), "critical to CMH."

Based on Project Co's recent progress draws and CMH's observations, it is clear the Work has effectively ground to a halt. As an example, set out below is a table which contrasts the level of Project Co activity that was projected for the 6 months preceding the Scheduled Interim Completion Date (based on the projected costs of construction for those months shown in Schedule 8 to the Project Agreement), and the value of the actual amounts certified for payment for the past 6 months:

Projected Construction Costs for the 6 Months Prior to Scheduled Interim Completion		Actual Amounts Certified for Payment in the Past 6 Months		Actual vs Projected (as %)
Month	Amount	Month	Amt Cert'd	
June 2016	\$3,610,494	February 2018	\$184,687	5.11%
July 2016	\$2,860,326	March 2018	\$27,241	0.95%
August 2016	\$2,071,656	April 2018	\$45,225	2.18%
September 2016	\$1,254,420	May 2018	\$59,083	4.71%
October 2016	\$1,169,796	June 2018	\$45,354	3.88%
November 2016	\$1,135,200	July 2018	\$22,000 (est)	1.94%
TOTAL	\$12,101,892	TOTAL	\$383,590	3.17%

With Project Co not yet having achieved Interim Completion, and given the amount of remaining work, working at levels noted above is an effective work stoppage by Project Co, and amounts to either cessation or suspension of a substantial portion of Project Co's sole business. Whether voluntary or involuntary, such cessation or suspension of work has and continues to have a material adverse effect on Project Co's ability to perform its obligations under the Project Agreement, which is evidenced by the extensive delays on the Project. In addition, and without limitation, Project Co's effective work stoppage has materially and adversely impacted its ability to meet the general responsibilities and Contract Time requirements set out in Sections 11.1 and 11.2 of the Project Agreement, such as achieving milestone dates and occupancy of the Project as required, performing and completing all Work in a timely and professional manner, not impairing ongoing operation of the Existing Facility, maintaining complete control of the Work, and directing, supervising and coordinating all Work.

3. A Project Co Event of Default pursuant to Section 26.1(a)(iii) of the Project Agreement, in that Project Co made a representation or warranty that was false or misleading when made, and that has or will have a material adverse effect on the performance of the Work.

In Section 7.1(a)(xiv) of the Project Agreement, Project Co represented and warranted to CMH that the Scheduled Substantial Completion Date was a realistic date and was achievable by Project Co performing the Work in accordance with the Project Agreement. Further, in Section 7.1(a)(xv) of

the Project Agreement, Project Co represented and warranted to CMH that Project Co and the Project Co Parties, collectively, had "extensive experience in the construction of health facilities and other public buildings" and had the "necessary high degree of expertise and experience to perform the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Work in accordance with the standard of care set out in Section 11.2(a)(viii)." That standard includes that Project Co "exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar hospital projects, in a timely, good and workmanlike manner" [emphasis added].

The Project is critically delayed. Both of the above representations and warranties were apparently false or misleading, in that Project Co knew or ought to have known it was incapable of achieving the key milestone dates and did not have the requisite high degree of expertise and experience in construction of health facilities and other public buildings to complete all requisite Work in a diligent and timely manner. The substantial and ongoing delays in the Project, including the current effective cessation or suspension of the Work, have had and continue to have a material adverse effect on the performance of the Work, as outlined above and below in this letter, and continue to compromise the reputation and integrity of CMH and the Province's health care system, as well as public confidence in that system.

4. A Project Co Event of Default pursuant to Section 26.1(a)(ix) of the Project Agreement, in that Project Co failed to pay the undisputed sum of \$512,078 due to CMH under the Project Agreement (as of June 30, 2018).

Section 11.2(a)(vii) of the Project Agreement requires that Project Co provide all water, heat, light, power, transportation and other facilities and services required for the performance and completion of the Work. Project Co has failed to pay CMH for charges incurred for electricity, water, steam and parking which, as of June 30, 2018, total \$512,078.

5. A continuing Project Co Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement, in that Project Co failed to remove construction liens registered against the title to the Site.

CMH's Notice of Project Co Event of Default dated May 31, 2018 was issued after Project Co failed to remove two construction liens registered against title to the Site. Project Co responded to that notice by letter dated June 11, 2018, to which CMH replied by letter dated June 29, 2018. In an ongoing breach of Project Co's obligation to remove them, the construction liens of Roque Roofing Inc. and P.J. Daly Contracting Ltd. remain registered against title.

In addition, three new construction liens have been registered, and remain registered against the title to the Site, as follows:

- a. on July 25, 2018 a construction lien in the amount of \$57,399.74 was registered against title to the Site by Ashland Paving Ltd., one of the Project Co Parties, as instrument no. WR1127117;
- b. on August 3, 2018 a construction lien in the amount of \$118,458.44 was registered against title to the Site by Duron Ontario Ltd., one of the Project Co Parties, as instrument no. WR1129621; and
- c. on August 8, 2018 a construction lien in the amount of \$361,600 was registered against title to the Site by Arjo Canada Inc., one of the Project Co Parties, as instrument no. WR1130256.

The failure to remove these three construction liens within, at most, 30 days of their registration will constitute a further Project Co Event of Default pursuant to Section 26.1(a)(viii).

- 6. A pending Project Co Event of Default pursuant to Section 26.1(a)(iv) of the Project Agreement, in that Project Co has breached its obligations under the Project Agreement which have had and will have a material adverse effect on CMH or the ability of CMH to operate the Facility.

Project Co is in breach of its obligations under the Project Agreement in that, among other things, Project Co:

- i. failed to ensure that the initial baseline Construction Schedule has been consistently maintained, subject only to approved extensions in Contract Time, contrary to Sections 12.1(a)(iv)-(ix) of the Project Agreement;
- ii. failed to comply with CMH's repeated requests to increase efforts on the Project, contrary to Section 12.3 of the Project Agreement;
- iii. failed to achieve Interim Completion by the Scheduled Interim Completion Date, contrary to Sections 11.1(a)(i)(B) and 11.12(c) of the Project Agreement;
- iv. will not and cannot achieve Substantial Completion by the Scheduled Substantial Completion Date, as acknowledged in Project Co's most recent schedule, contrary to Sections 11.1(a)(i)(C) and 11.12(c) of the Project Agreement;
- v. will not and cannot achieve Substantial Completion by the Longstop Date, as acknowledged in Project Co's most recent schedule, contrary to Section 26.1(a)(ii) of the Project Agreement;
- vi. failed to obtain CMH's written approval to changes in the critical path, contrary to Section 12.2(a) of the Project Agreement;
- vii. failed to remove liens registered against the title to the Site, contrary to Sections 11.22(a) and (c) and 26.1(a)(viii) of the Project Agreement;
- viii. failed to correct defective work, contrary to Sections 11.16(a) and 36.2 of the Project Agreement.

The above breaches of the Project Agreement have had and will have a material adverse effect on CMH and on CMH's ability to operate the Facility. In particular, and without being exhaustive:

- a. Ongoing operations of the hospital have been negatively impacted. Notably, CMH has been forced to operate with a divided Emergency Department (Triage in one

area and the remaining Emergency Department in another). This has significantly extended patient wait times to unacceptable lengths, has caused significant increased costs of operation in the Triage area, and had severe negative impacts on patient and staff satisfaction and CMH's ability to effectively and expeditiously treat emergency patients;

- b. CMH has been required to provide intensive care unit (ICU) services in a temporary, poorly designed space for an unduly extended period of time. It has had similar detrimental impacts on costs of operation, patient treatment, and patient and staff satisfaction;
- c. The clinical expansion and increased patient capacity expected by the Ministry of Health and Long-Term Care and the local community continues to be significantly delayed, impacting CMH's ability to meet public needs and expectations, as well as financially impacting necessary funding tied to available beds that would permit CMH to better serve the health needs of the community;
- d. CMH has been unable to install state of the art equipment and new technology as intended, since space where such new equipment and technology is to be installed has not been completed. This restricts CMH's ability to provide better treatment to patients, which is a core objective of having undertaken the Project;
- e. CMH has incurred significant increased capital costs as a result of the extended duration of the construction, such as increased project management staff and contract administration costs;
- f. Project Co's unreliable schedules and *ad hoc* cancellation of planned activities have severely impacted CMH's organizational planning for the Existing Facility and the Facility;
- g. Because of Project Co's delays, delivery of CMH's purchased diagnostic imaging equipment has preceded the completion of renovations. This will result in added and increased costs to CMH, because this equipment will have to be relocated once the Project is complete.

In accordance with Section 26.1(a)(iv)(A) of the Project Agreement, CMH requires Project Co to immediately commence and thereafter continue to remedy each breach of the Project Agreement and to put forward, within 5 Business Days of receipt of this letter, a reasonable plan and schedule for diligently remedying each breach. Project Co's failure to do so will result in a Project Co Event of Default.

Also, in accordance with Section 12.3 of the Project Agreement, CMH requires that Project Co promptly increase efforts on the Project, including adding more personnel during regular times and during periods of time for which overtime may be required to comply with the approved construction schedule. Such increased efforts should be included in the plan and schedule for remedying the above breaches as required by Section 26.1(a)(iv)(A)(II) of the Project Agreement.

- 7. A pending Project Co Event of Default pursuant to Section 26.1(a)(v) of the Project Agreement, in that Project Co has effectively abandoned the Work.

Work currently progressing at the Site is *de minimis* (for example, on the morning of August 7, 2018 there were a total of 10 workers on Site). It is CMH's view that such *de minimis* Work constitutes abandonment of the Project by Project Co without justification.

Accordingly, CMH hereby makes written request pursuant to Section 26.1(a)(v) of the Project Agreement that Project Co return to the Site and continue all outstanding Work. Project Co's failure to do so within 3 Business Days will result in a Project Co Event of Default.

8. A Project Co Event of Default pursuant to Section 26.1(a)(xiv) of the Project Agreement, in that there is a default by a Project Co Party under one of the Implementing Agreements.

The Construction Contract includes parallel obligations on the Contractor, one of the Project Co Parties, to achieve the key Project milestones, including achieving Substantial Completion by the Longstop Date, and to remove liens registered against the title to the Site. For the reasons set out above, the Contractor is in breach of its obligations under the Construction Contract, one of the Implementing Agreements, which constitutes a Project Co Event of Default under Section 26.1(a)(xiv) of the Project Agreement.

Be advised that, if Project Co does not promptly correct or cure the Project Co Events of Default, or otherwise promptly provide CMH with an acceptable plan and schedule to do so, CMH may exercise its remedies pursuant to Section 26.3 of the Project Agreement, without prejudice to any other right or remedy that CMH may have.

A copy of this letter is being directed to the Agent in accordance with Section 26.3(a) of the Project Agreement and the terms of the Lender's Direct Agreement.

Capitalized terms not defined in this letter have the meanings given to them in the Project Agreement.

CMH continues to reserve all of its rights and remedies under the Project Agreement.

Yours truly,



Mike Prociw
Vice President, Finance and Corporate Services, CFO and CIO

- c. Steven Aquino
Bondfield Construction Company Ltd.
- c. Denise McNally
Infrastructure Ontario
- c. James Di Giacomo
BMO Bank of Montreal

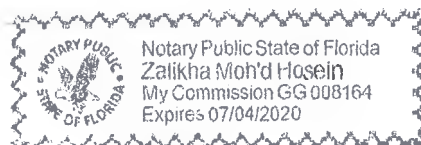
TAB D

This is **Exhibit "D"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE : FL
COUNTY : BROWARD



5-31-19

November 16, 2018

CONFIDENTIAL

Via Facsimile

Bondfield Construction Company Limited
407 Basaltic Road
Concord, ON L4K 4W8

**Attention: Mr. Steven Aquino
Vice President**

Re: Construction Contract dated as of August 28, 2014, between 2423402 Ontario Inc. ("Project Co") and Bondfield Construction Company Limited (the "Construction Contractor"), as such Construction Contract is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Construction Contract"); and

Re: Limited Recourse Guarantee and Pledge made as of August 28, 2014 between the Construction Contractor, as guarantor, Bank of Montreal, as administrative agent (the "Agent") for and on behalf of itself and the Lenders as defined in the Credit Agreement (the "Credit Agreement") dated August 28, 2014 between Project Co, the Agent and the Lenders (the "Lenders"), and Project Co. (the "Guarantee")

Dear Mr. Aquino:

Reference is made to the Construction Contract, Credit Agreement and Guarantee. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Construction Contract, the Credit Agreement or the Guarantee.

Contractor Bonds

As you know, we are an Obligee under Performance Bond No. 6342957 dated August 28, 2014 between the Construction Contractor, as Principal, Zurich Insurance Company Ltd. (the "**Surety**") and Project Co (the "**Contractor Performance Bond**") that has been provided in support of the Construction Contractor's obligations under the Construction Contract. Pursuant to the terms of the Contractor Performance Bond, whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations under the Construction Contract, the Surety has agreed to perform certain obligations set out in the Contractor Performance Bond.

In addition, we are an Additional Named Obligee under Demand Bond No. 6342958 dated August 28, 2014 between the Construction Contractor, as Principal, the Surety and Project Co (the "**Contractor Demand Bond**") that has been provided in support of your obligation to pay Liquidated Damages under the Contractor Support Agreement. Pursuant to the Contractor Demand Bond, in the event that a Liquidated Damages Default occurs and the Owner (as defined therein) declares that a Liquidated Damages Default has occurred and advises Zurich Insurance Company Ltd., as Surety, of such default in writing, the Owner may request that the Surety unconditionally pay on demand to the Owner such sum or sums as may from time to time be requested up to, in the aggregate, the bond amount of \$8,737,725. Pursuant to the Dual Obligee Rider attached to the Contractor Demand Bond, the Agent is an Additional Named Obligee and is entitled to the same rights as the Owner and to enforce the obligations of the

Contractor and the Surety under the Contractor Demand Bond, including making claims under the Contractor Demand Bond following a Liquidated Damages Default.

As set out in our letters to you and to Project Co dated November 5, 2018, and in the letter by CMH to Project Co dated August 13, 2018, copies of which were in each case provided to you, numerous events have occurred and continue to occur which constitute Contractor Events of Default under the Construction Contract. In particular:

- You have failed to pay Liquidated Damages when due under the Contractor Support Agreement, dated as of August 28, 2014, which constitutes an event of default pursuant to Section 12 of the Construction Contract and a Liquidated Damages Default under the Contractor Demand Bond.
- You have failed to remove numerous encumbrances registered against title to the Site within the time periods required under the Project Agreement, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract.
- You have failed to maintain the Project schedule and achieve schedule milestones, and are consequently unable to achieve Substantial Completion by the Longstop Date which has had a material adverse effect on CMH and its ability to operate the Facility, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(iv) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract.

In addition, we also understand that there are now few workers on Site on a daily basis, and that construction activity on the Site has decreased such that you have ceased performing the Work as required under the Construction Contract.

We hereby confirm and declare that you are in default of your obligations under the Construction Contract. As notified to you in our letter dated November 5, 2018, as an Additional Obligee under the Contractor Demand Bond we are entitled to and have made demand on the Surety under the Contractor Demand Bond. As an Obligee under the Contractor Performance Bond, we are also entitled to make demand on the Surety under the Contractor Performance Bond and will be doing so concurrently with this letter.

Guarantee and Demand

Pursuant to section 2.1 of the Guarantee, you irrevocably and unconditionally guaranteed to the Agent and the Lenders the punctual, complete and irrevocable payment when due (whether at stated maturity, by acceleration, declaration, demand or otherwise), and at all times thereafter, and the performance of, all of the Guaranteed Obligations in accordance with the Guarantee.

Concurrent with this letter, the Agent has sent a letter to Project Co outlining various Events of Default under the Credit Agreement, declaring that the entire principal amount of all Loans outstanding, all unpaid accrued interest and all fees and other amounts required to be paid by Project Co under the Credit Agreement (including Break Costs and any Swap Breakage Costs) (collectively all "**Indebtedness**") is immediately due and payable and demanding payment of all Indebtedness within ten (10) days. Please find a copy of the letter attached, together with a notice setting out the present value of the Indebtedness. As noted, interest, fees, costs and other amounts will continue to accrue in accordance with the Credit Agreement until the Indebtedness is repaid in full.

Pursuant to section 2.3 of the Guarantee you agreed that upon the occurrence and during the continuance of an Event of Default, you would make immediate payment to the Agent of all Guaranteed Obligations owing or payable to the Agent and the Lenders on written demand by the Agent. Pursuant to section 2.4 of the Guarantee, you specifically agreed that the Agent shall not be bound to exhaust its recourse against Project Co or any other person prior to being entitled to enforce its rights under the Guarantee. Accordingly, the Agent, on behalf of the Lenders, hereby demands payment of all Guaranteed Obligations, being all the Indebtedness, ten (10) days from the date hereof inclusive of all interest, fees, costs and other amounts, which continue to accrue. Pursuant to the Guarantee, your liability shall bear interest from the date hereof at the rate or rates of interest now applicable to the Guaranteed Obligations under and calculated in the manner provided in the Credit Agreement.

Unless arrangements satisfactory to the Lenders to repay the Guaranteed Obligations in accordance with the foregoing demand are made, the Lenders will take such actions as they deem appropriate, including taking any or all of the actions pursuant to section 5.1 of the Guarantee, enforcement of any and all Security Interests and exercise of all rights available to the Lenders in relation to the Collateral, including the Pledged Securities. The Lenders also reserve the right to take such interim steps to enforce, preserve or protect the Collateral as it determines is necessary or advisable under the circumstances, without further notice to you.

The Lenders expressly reserve all of their other rights, powers, privileges and remedies under the Guarantee, the Credit Agreement and the other Loan Documents, applicable law or otherwise. The failure of any Lender to exercise any such rights, powers, privileges and remedies is not intended, and shall not be construed, to be a waiver of any such rights or remedies pursuant to the Guarantee or otherwise and nothing in this letter or any delay by the Agent or any Lender in exercising any rights, powers, privileges and remedies under the Guarantee, Credit Agreement, any other Loan Document, or applicable law shall be construed as a waiver or modification of such rights, powers, privileges and remedies. This letter is not, and shall not be deemed to be, a waiver of, or a consent to, any default, noncompliance, or otherwise now existing or hereafter arising under the Guarantee, Credit Agreement or any of the other Loan Documents.

The holding of any discussions between or among any or all of the Agent, the Lenders, the Construction Contractor, Project Co, the Surety, CMH or Infrastructure Ontario regarding the administration of the Loans or proposals regarding amendments to, or modifications or restructurings of the Credit Agreement or any Loan Document shall not constitute any waiver of any Default or Event of Default or the obligations of the Construction Contractor under the Guarantee, or an agreement to forbear from the exercise of the Agent's or any Lender's rights and remedies under the Guarantee, Credit Agreement or any other Loan Document, or applicable law, nor shall it be construed as an undertaking by the Agent, or any Lender to continue such discussions or to enter into any such amendments, modifications or restructurings.

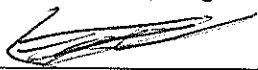
Yours very truly,

BANK OF MONTREAL, as Agent

By: _____

Name:

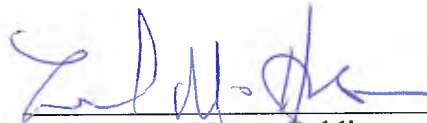
Title:


Eden Orbach
Senior Manager

cc: Zurich Insurance Company Ltd.
2423402 Ontario Inc.

T A B E

This is **Exhibit "E"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

November 16, 2018

CONFIDENTIAL

Via Facsimile

2423402 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8

**Attention: Mr. Steven Aquino
President**

Re: Credit Agreement dated as of August 28, 2014, between 2423402 Ontario Inc. (the "Borrower"), Bank of Montreal, as administrative agent (the "Agent"), and certain lenders (the "Lenders"), as such Credit Agreement is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Credit Agreement")

Dear Mr. Aquino:

Reference is made to the Credit Agreement and the letter from Cambridge Memorial Hospital to the Agent, copying you, dated August 13, 2018 (the "**CMH Letter**"). Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Credit Agreement.

Construction Lien Event of Default

Claims for lien have been registered against the Site as follows:

- 1) Instrument No. WR1108973, registered April 25, 2018, being a construction lien in favour of Roque Roofing Inc. in the amount of \$290,544 and Instrument No. WR1119300, registered June 15, 2018, being a Certificate of Action respecting same;
- 2) Instrument No. WR1127117, registered July 25, 2018, being a construction lien in favour of Ashland Paving Ltd. in the amount of \$57,400 and Instrument No. WR1131980, registered August 16, 2018, being a Certificate of Action respecting same;
- 3) Instrument No. WR1129621, registered August 3, 2018, being a construction lien in favour of Duron Ontario Ltd. in the amount of \$118,458;
- 4) Instrument No. WR1130256, registered August 8, 2018, being a construction lien in favour of Arjo Canada Inc. in the amount of \$361,600 and Instrument No. WR1139102, registered September 17, 2018, being a Certificate of Action respecting same;
- 5) Instrument No. WR1131014, registered August 10, 2018, being a construction lien in favour of Paramount Painting & Decorating (London) Inc. in the amount of \$95,832 and Instrument No. WR1140283, registered September 21, 2018 being a Certificate of Action respecting same;

- 6) Instrument No. WR1133546, registered August 23, 2018, being a construction lien in favour of Stonhard (Stonhard Division, RPM Canada) in the amount of \$105,512 and Instrument No. WR1143833, registered October 9, 2018, being a Certificate of Action respecting same;
- 7) Instrument No. WR1134480, registered August 27, 2018, being a construction lien in favour of Toromont Industries Ltd. in the amount of \$7,332 and Instrument No. WR1149667, registered November 5, 2018, being a Certificate of Action respecting same;
- 8) Instrument No. WR1137206, registered September 7, 2018, being a construction lien in favour of DDK Marketing Inc. in the amount of \$23,000;
- 9) Instrument No. WR1140186, registered September 21, 2018, being a construction lien in favour of Riccardo Persi in the amount of \$63,159;
- 10) Instrument No. WR1140559, registered September 25, 2018, being a construction lien in favour of Swisslog Healthcare in the amount of \$77,109; and
- 11) Instrument No. WR1146157, registered October 19, 2018, being a construction lien in favour of Biggs and Narciso Constructions Services Inc. in the amount of \$187,072.

Failure to discharge these construction liens constitutes an Event of Default pursuant to Section 10.1(16) of the Credit Agreement.

Failure to Pay and Liquidated Damages Events of Default

As of the date hereof, a payment in the amount of \$451,916.92 is due and payable by the Borrower to the Agent on account of interest, standby fees, administrative agent fees and other Borrowing Costs and Transaction Expenses.

Failure by the Borrower to make when due any payment of interest or Fees when required under the Credit Agreement is an Event of Default pursuant to Section 10.1(1) of the Credit Agreement. In addition, the Contractor has failed to pay Liquidated Damages when due under the Contractor Support Agreement in the aggregate amount of \$451,916.92, dated as of August 28, 2014, which constitutes an Event of Default under Section 10.1(5) of the Credit Agreement.

CMH Notice of Default

In the CMH Letter, CMH provided notice to the Agent of the following defaults by the Borrower under the Project Agreement:

- 1) The Borrower is unable to achieve Substantial Completion by the Longstop Date, which is a Project Co Event of Default under Section 26.1(a)(ii) of the Project Agreement;
- 2) The Borrower has ceased or suspended performing a substantial portion of its business, which has and continues to have a material adverse effect on the Borrower's ability to perform its obligations under the Project Agreement, which is a Project Co Event of Default under Section 26.1(a)(i)(B) of the Project Agreement;

- 3) The Borrower made a representation or warranty that was false or misleading when made, and that has or will have a material adverse effect on the performance of the Work, which is a Project Co Event of Default under Section 26.1(a)(iii) of the Project Agreement, namely:
 - a. in section 7.1(a)(xiv) of the Project Agreement, the Borrower represented and warranted to CMH that the Scheduled Completion Date was a realistic date and was achievable by Project Co performing the Work in accordance with the Project Agreement; and
 - b. in section 7.1(a)(xv) of the Project Agreement, the Borrower represented and warranted to CMH that Project Co and the Project Co Parties, collectively, had "extensive experience in the construction of health facilities and other public buildings" and had the "necessary high degree of expertise and experience to perform the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Work in accordance with the standard of care set out in Section 11.2(a)(viii)."
- 4) The Borrower has failed to pay CMH for charges incurred for electricity, water, steam and parking in the amount of \$512,078 (as of June 30, 2018), which is a Project Co Event of Default pursuant to Section 26.1(a)(ix) of the Project Agreement;
- 5) The Borrower has failed to remove construction liens registered against title to the Site as noted above, which is a Project Co Event of Default under Section 26.1(a)(viii) of the Project Agreement;
- 6) The Borrower has breached certain obligations under the Project Agreement which has or will have a material adverse effect on CMH or the ability of CMH to operate the Facility, which is a Project Co Event of Default under Section 26.1(a)(iv) of the Project Agreement, namely:
 - a. the Borrower failed to ensure that the initial baseline Construction Schedule has been consistently maintained, subject only to approved extensions in Contract Time, contrary to Sections 12.1(a)(iv)-(ix) of the Project Agreement;
 - b. the Borrower failed to comply with CMH's repeated requests to increase efforts on the Project, contrary to Section 12.3 of the Project Agreement;
 - c. the Borrower failed to achieve Interim Completion by the Scheduled Interim Completion Date, contrary to Sections 11.1(a)(i)(B) and 11.12(c) of the Project Agreement;
 - d. the Borrower will not and cannot achieve Substantial Completion by the Scheduled Substantial Completion Date, contrary to Sections 11.1(a)(i)(C) and 11.12(c) of the Project Agreement;
 - e. the Borrower will not and cannot achieve Substantial Completion by the Longstop Date, contrary to Section 26.1(a)(ii) of the Project Agreement;
 - f. the Borrower failed to obtain CMH's written approval to changes in the critical path, contrary to Section 12.2(a) of the Project Agreement;

- g. the Borrower failed to remove liens registered against the title to the Site, contrary to Sections 11.22(a) and (c) and 26.1(a)(viii) of the Project Agreement; and
 - h. the Borrower failed to correct defective work, contrary to Sections 11.16(a) and 36.2 of the Project Agreement;
- 7) The Borrower has effectively abandoned the Work, which is a Project Co Event of Default under Section 26.1(a)(v) of the Project Agreement; and
- 8) The Contractor will fail to achieve Substantial Completion by the Longstop Date and has failed to remove the construction liens that have been registered against the Site as noted above, which is in breach of its obligations under the Construction Contract and accordingly a Project Co Event of Default under Section 26.1(a)(xiv) of the Project Agreement.

The service by CMH of a Project Co Default Notice as provided for in section 6.1 of the Lenders' Direct Agreement constitutes an Event of Default under Section 10.1(32) of the Credit Agreement. Similarly, certain of these facts also constitute separate Events of Default under the Credit Agreement, including that there is an Event of Default under Section 10.1(22) for suspending, abandoning, cancelling or terminating the Work or any material part thereof other than in accordance with the terms of the Material Project Documents.

Performance Bond and Demand Bond

Notice is hereby given that separate Events of Default have occurred and are continuing pursuant to *inter alia* Sections 10.1(1), 10.1(5), 10.1(16), 10.1(22) and 10.1(32) of the Credit Agreement (the "**Specified Events of Default**").

As notified to you in our letter dated November 5, 2018, the Agent on behalf of the Lenders has made demand of Zurich Insurance Company Ltd. (the "**Surety**") under Demand Bond No. 6342958 dated August 28, 2014 (the "**Contractor Demand Bond**") in respect of the Contractor's failure to pay Liquidated Damages when due under the Contractor Support Agreement.

Be advised that the Agent on behalf of the Lenders will also be making a demand of the Surety under Performance Bond No. 6342957 dated August 28, 2014 for the Project (the "**Contractor Performance Bond**") in respect of the Specified Events of Default which constitute Contractor Events of Default under the Construction Contract.

No Further Loans, Demand for Payment and 244 Notice

As you know, pursuant to Section 8.2(1) of the Credit Agreement, it is a condition precedent to Loan funding that no Default or Event of Default shall have occurred and be continuing. Be advised that the Lenders will not consider any request to waive this condition precedent, and therefore no further Loans will be provided while the Events of Default continue.

Pursuant to section 10.3(1), upon the occurrence of an Event of Default of the nature of the Specified Events of Default and upon notice to you, the Administrative Agent may declare the entire principal amount of all Loans outstanding, all unpaid accrued interest and all fees and other amounts required to be paid by you under the Credit Agreement (including Break Costs

and any Swap Breakage Costs) (collectively, all "**Indebtedness**") to be immediately due and payable without the necessity of presentment for payment, notice of non-payment and of protest (all of which are expressly waived), together with taking various other actions including exercising rights under or in connection with the Contractor Bonds.

Accordingly, the Agent, on behalf of the Lenders, hereby declares all Indebtedness to be immediately due and payable and demands payment of all such Indebtedness by the date that is ten (10) days from the date hereof. Interest, fees, costs and other amounts will continue to accrue in accordance with the Credit Agreement until the Indebtedness is repaid in full. You should contact the Agent on the date of payment to ascertain the amount then-outstanding on account of the Indebtedness.

Please find enclosed a Notice of Intention to Enforce Security issued under and pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**Notice**") together with a consent to early enforcement, which you may execute and return to the undersigned. Unless arrangements satisfactory to the Lenders to repay the Indebtedness in accordance with the foregoing demand are made, the Lenders will take such actions as they deem appropriate, including enforcement of the Security (as defined in the Notice). The Lenders also reserve the right to take such interim steps to enforce, preserve or protect the Collateral as it determines is necessary or advisable under the circumstances prior to the expiration of the ten (10) day period, without further notice to you.

The Lenders expressly reserve all of their other rights, powers, privileges and remedies under the Credit Agreement, the other Loan Documents, applicable law or otherwise with respect to any Event of Default (including, without limitation, the Specified Events of Default) now existing or hereafter arising under the Credit Agreement or any of the other Loan Documents, including without limitation, the right to further call upon the Contractor Demand Bond and the Contractor Performance Bond. The failure of any Lender to exercise any such rights, powers, privileges and remedies is not intended, and shall not be construed, to be a waiver of any such Events of Default (including, without limitation, the Specified Events of Default). The Lenders may elect to exercise any or all of their rights, at their sole option, at any time hereafter, without the necessity of any further notice, demand or other action on the part of the Lenders.

Nothing contained in this letter or any delay by the Agent or any Lender in exercising any rights, powers, privileges and remedies under the Credit Agreement, any other Loan Document, or applicable law with respect to the Specified Events of Default or any other Default or Events of Default now existing or hereafter arising under the Credit Agreement or any of the other Loan Documents shall be construed as a waiver or modification of such rights, powers, privileges and remedies. This letter is not, and shall not be deemed to be, a waiver of, or a consent to, any default, noncompliance, Defaults (including, without limitation, the Specified Events of Default) now existing or hereafter arising under the Credit Agreement or any of the other Loan Documents.

The holding of any discussions between or among any or all of the Agent, the Lenders, the Borrower, the Surety, CMH or Infrastructure Ontario regarding the administration of the Loans or proposals regarding amendments to, or modifications or restructurings of the Credit Agreement or any Loan Document shall not constitute any waiver of any Default or Event of Default (including, without limitation, the Specified Events of Default), or an agreement to forbear from the exercise of the Agent's or any Lender's rights and remedies under the Credit Agreement or any other Loan Document, or applicable law, nor shall it be construed as an undertaking by the

Agent, or any Lender to continue such discussions or to enter into any such amendments, modifications or restructurings.

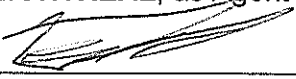
Yours very truly,

BANK OF MONTREAL, as Agent

By: _____

Name:

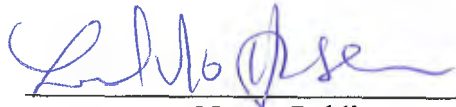
Title:


Eden Orbach
Senior Manager

cc: Cambridge Memorial Hospital
Steven Aquino, Bondfield Construction Company Ltd.

TAB F

This is **Exhibit "F"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: Brow ARD



5-31-19

November 16, 2018

CONFIDENTIAL

VIA COURIER

Zurich Insurance Company Ltd.

Surety Department
First Canadian Place,
100 King Street West Suite 5500, P.O. Box 290
Toronto, ON M5X 1C9

Re: Demand Upon Performance Bond No. #6342957 dated August 28, 2014, together with the Multiple Obligee Rider thereto (collectively, the "Bond")

Bank of Montreal, in its capacity as administrative agent (the "**Agent**"), is an Obligee under the above-noted Bond. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Bond.

Please find enclosed a copy of a letter dated November 14, 2018 from the Agent to the Principal, pursuant to which the Agent notified the Principal of the occurrence of numerous events of default under the Construction Contract including, without limitation, for failure to remove numerous encumbrances registered against title to the Site (as defined in the Construction Contract). The occurrence of each such event of default constitutes a Contractor Event of Default under the Bond.

The Principal is, and has been declared by the Obligee to be, in default in respect of its obligations under the Construction Contract, and the Obligee has duly performed all of its obligations thereunder. Pursuant to the terms of the Multiple Obligee Rider attached to the Bond, we are deemed to be an Obligee under the Bond and are therefore entitled to make such declaration of default and entitled to enforce the obligations of the Principal and the Surety under the Bond, and the Bond requires no further steps or actions, including the exercise of any step-in rights, to be taken by us in order to make demand on the Bond. Accordingly, we hereby demand that the Surety promptly remedy the above-referenced Contractor Event of Default and the other Contractor Events of Default set out in the attached letter, or promptly select and carry out one of the other specified options available to the Surety pursuant to the Bond.

Yours very truly,

BANK OF MONTREAL, as Agent

By: 

Name:


Title:

Eden Orbach
Senior Manager

cc: Bondfield Construction Company Ltd.
2423402 Ontario Inc.
Cambridge Memorial Hospital

TAB G

This is **Exhibit "G"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019


Notary Public

STATE: FL

COUNTY: Broward



5-31-19

November 16, 2018

CONFIDENTIAL

Via Facsimile

Cambridge Memorial Hospital
700 Coronation Blvd
Cambridge, ON N1R 3G2

Attention: Angelo Presta

Re: Project Agreement made as of August 28, 2014 (the "Project Agreement") between 2423402 Ontario Inc., as borrower (the "Borrower") and Cambridge Memorial Hospital ("CMH")

And Re: Credit Agreement made as of August 28, 2014 (as amended or renewed from time to time, the "Credit Agreement") between the Borrower, as borrower, Bank of Montreal, as administrative agent (the "Agent"), and each of the financial institutions and other entities from time to time parties thereto as lenders (the "Lenders")

And Re: Lenders' Direct Agreement made as of August 28, 2014 (the "Lenders' Direct Agreement") between CMH, the Agent and the Borrower

Dear Sirs/Mesdames:

We write to you in our capacity as Agent under the Credit Agreement. Unless otherwise defined herein, capitalized terms and expressions used herein have the meanings ascribed thereto in the Credit Agreement.

Claims for lien have been registered against the Site as follows:

- 1) Instrument No. WR1108973, registered April 25, 2018, being a construction lien in favour of Roque Roofing Inc. in the amount of \$290,544 and Instrument No. WR1119300, registered June 15, 2018, being a Certificate of Action respecting same;
- 2) Instrument No. WR1127117, registered July 25, 2018, being a construction lien in favour of Ashland Paving Ltd. in the amount of \$57,400 and Instrument No. WR1131980, registered August 16, 2018, being a Certificate of Action respecting same;
- 3) Instrument No. WR1129621, registered August 3, 2018, being a construction lien in favour of Duron Ontario Ltd. in the amount of \$118,458;
- 4) Instrument No. WR1130256, registered August 8, 2018, being a construction lien in favour of Arjo Canada Inc. in the amount of \$361,600 and Instrument No. WR1139102, registered September 17, 2018, being a Certificate of Action respecting same;
- 5) Instrument No. WR1131014, registered August 10, 2018, being a construction lien in favour of Paramount Painting & Decorating (London) Inc. in the amount of \$95,832 and Instrument No. WR1140283, registered September 21, 2018 being a Certificate of Action respecting same;
- 6) Instrument No. WR1133546, registered August 23, 2018, being a construction lien in favour of Stonhard (Stonhard Division, RPM Canada) in the amount of \$105,512 and Instrument No. WR1143833, registered October 9, 2018, being a Certificate of Action respecting same;

- 7) Instrument No. WR1134480, registered August 27, 2018, being a construction lien in favour of Toromont Industries Ltd. in the amount of \$7,332 and Instrument No. WR1149667, registered November 5, 2018, being a Certificate of Action respecting same;
- 8) Instrument No. WR1137206, registered September 7, 2018, being a construction lien in favour of DDK Marketing Inc. in the amount of \$23,000;
- 9) Instrument No. WR1140186, registered September 21, 2018, being a construction lien in favour of Riccardo Persi in the amount of \$63,159;
- 10) Instrument No. WR1140559, registered September 25, 2018, being a construction lien in favour of Swisslog Healthcare in the amount of \$77,109; and
- 11) Instrument No. WR1146157, registered October 19, 2018, being a construction lien in favour of Biggs and Narciso Constructions Services Inc. in the amount of \$187,072.

We understand that as of today these construction liens have not been vacated.

In addition, a payment in the amount of \$415,916.92 is due and payable by the Borrower to the Agent on account of interest, standby fees, administrative agent fees and other Borrowing Costs and Transaction Expenses, which remains unpaid as of the date hereof. In addition, the Contractor has failed to pay Liquidated Damages when due under the Contractor Support Agreement, dated as of August 28, 2014.

In addition, in your letter of August 13, 2018, you provided notice to us in our capacity as Agent of the following defaults by the Borrower under the Project Agreement:

- 1) The Borrower is unable to achieve Substantial Completion by the Longstop Date, which is a Project Co Event of Default under Section 26.1(a)(ii) of the Project Agreement;
- 2) The Borrower has ceased or suspended performing a substantial portion of its business, which has and continues to have a material adverse effect on the Borrower's ability to perform its obligations under the Project Agreement, which is a Project Co Event of Default under Section 26.1(a)(i)(B) of the Project Agreement;
- 3) The Borrower made a representation or warranty that was false or misleading when made, and that has or will have a material adverse effect on the performance of the Work, which is a Project Co Event of Default under Section 26.1(a)(iii) of the Project Agreement, namely:
 - a. in section 7.1(a)(xiv) of the Project Agreement, the Borrower represented and warranted to CMH that the Scheduled Completion Date was a realistic date and was achievable by Project Co performing the Work in accordance with the Project Agreement; and
 - b. in section 7.1(a)(xv) of the Project Agreement, the Borrower represented and warranted to CMH that Project Co and the Project Co Parties, collectively, had "extensive experience in the construction of health facilities and other public buildings" and had the "necessary high degree of expertise and experience to perform the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Work in accordance with the standard of care set out in Section 11.2(a)(viii)."
- 4) The Borrower has failed to pay CMH for charges incurred for electricity, water, steam and parking in the amount of \$512,078 (as of June 30, 2018), which is a Project Co Event of Default pursuant to Section 26.1(a)(ix) of the Project Agreement;

- 5) The Borrower has failed to remove construction liens registered against title to the Site as noted above, which is a Project Co Event of Default under Section 26.1(a)(viii) of the Project Agreement;
- 6) The Borrower has breached certain obligations under the Project Agreement which has or will have a material adverse effect on CMH or the ability of CMH to operate the Facility, which is a Project Co Event of Default under Section 26.1(a)(iv) of the Project Agreement, namely:
 - a. the Borrower failed to ensure that the initial baseline Construction Schedule has been consistently maintained, subject only to approved extensions in Contract Time, contrary to Sections 12.1(a)(iv)-(ix) of the Project Agreement;
 - b. the Borrower failed to comply with CMH's repeated requests to increase efforts on the Project, contrary to Section 12.3 of the Project Agreement;
 - c. the Borrower failed to achieve Interim Completion by the Scheduled Interim Completion Date, contrary to Sections 11.1(a)(i)(B) and 11.12(c) of the Project Agreement;
 - d. the Borrower will not and cannot achieve Substantial Completion by the Scheduled Substantial Completion Date, contrary to Sections 11.1(a)(i)(C) and 11.12(c) of the Project Agreement;
 - e. the Borrower will not and cannot achieve Substantial Completion by the Longstop Date, contrary to Section 26.1(a)(ii) of the Project Agreement;
 - f. the Borrower failed to obtain CMH's written approval to changes in the critical path, contrary to Section 12.2(a) of the Project Agreement;
 - g. the Borrower failed to remove liens registered against the title to the Site, contrary to Sections 11.22(a) and (c) and 26.1(a)(viii) of the Project Agreement; and
 - h. the Borrower failed to correct defective work, contrary to Sections 11.16(a) and 36.2 of the Project Agreement;
- 7) The Borrower has effectively abandoned the Work, which is a Project Co Event of Default under Section 26.1(a)(v) of the Project Agreement; and
- 8) The Contractor will fail to achieve Substantial Completion by the Longstop Date and has failed to remove the construction liens that have been registered against the Site as noted above, which is in breach of its obligations under the Construction Contract and accordingly a Project Co Event of Default under Section 26.1(a)(xiv) of the Project Agreement.

Pursuant to:

- a) Section 10.1(16) of the Credit Agreement, failure to discharge these construction liens is an Event of Default under the Credit Agreement;
- b) Section 10.1(1) of the Credit Agreement, failure by the Borrower to make when due any payment of interest or Fees when required under the Credit Agreement or any other Loan Document is an Event of Default under the Credit Agreement;
- c) Section 10.1(5) of the Credit Agreement, the failure of the Contractor to pay Liquidated Damages when due under the Contractor Support Agreement is an Event of Default under the Credit Agreement; and

- d) Section 10.1(32) of the Credit Agreement, the service of a Project Co Default Notice as provided for in section 6.1 of the Lenders' Direct Agreement constitutes an Event of Default under the Credit Agreement.

We have notified the Borrower of the occurrence of such Events of Default and have declared all amounts owing by the Borrower under the Credit Agreement to be immediately due and payable and demanded payment of all such amounts by the date that is ten (10) days from the date of such notice. Therefore, as required pursuant to Section 5.1 of the Lender's Direct Agreement, we hereby notify you of the occurrence of such Events of Default and the Enforcement Action (as defined in the Lenders' Direct Agreement) commenced by the Agent on behalf of the Lenders.

In addition, as required pursuant to Section 6.1 of the Lenders' Direct Agreement, we have made demand on Zurich Insurance Company Ltd. under the Contractor Performance Bond with respect to the Contractor Events of Default that have occurred and are continuing under the Construction Contract.

No waiver of any Default or Event of Default under the Credit Agreement has been provided to the Borrower, nor have the Lenders agreed to waive, modify or forebear the exercise of any of their rights, powers, privileges or remedies under the Credit Agreement.

The Agent, on behalf of the Lenders, reserves all of the rights and remedies of the Agent and the Lenders under the Lender's Direct Agreement and the Credit Agreement.

Yours very truly,

BANK OF MONTREAL, as Agent

Per: _____



Eden Orbach
Senior Manager

cc: Mike Prociw, Cambridge Memorial Hospital
cc: Steven Aquino, 2423402 Ontario Inc.

TAB H

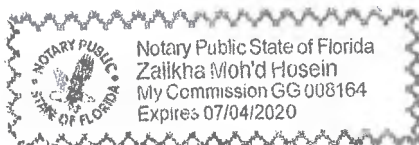
This is **Exhibit "H"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

October 10, 2018

CONFIDENTIAL

Via Facsimile

Cambridge Memorial Hospital
700 Coronation Blvd
Cambridge, ON N1R 3G2

Attention: Patrick Gaskin

Infrastructure Ontario
1 Dundas St W
Toronto, ON M5G 1Z1

Attention: John McKendrick

Zurich Insurance Company Ltd.
First Canadian Place
100 King Street West, Suite 5500
Toronto, Ontario M5X 1C9

Attention: Adrian Braganza

Re: Project agreement made as of August 28, 2014 (the "**Project Agreement**") between 2423402 Ontario Inc., as borrower (the "**Borrower**") and Cambridge Memorial Hospital ("**CMH**")

And
Re: Credit agreement made as of August 28, 2014 (as amended or renewed from time to time, the "**Credit Agreement**") between the Borrower, as borrower, Bank of Montreal, as administrative agent (the "**Agent**"), and each of the financial institutions and other entities from time to time parties thereto as lenders (the "**Lenders**")

And
Re: Lenders' direct agreement made as of August 28, 2014 (the "**Lenders' Direct Agreement**") between CMH, the Agent and the Borrower

Dear Sirs/Mesdames:

We write to you in our capacity as Agent under the Credit Agreement. Unless otherwise defined herein, capitalized terms and expressions used herein have the meanings ascribed thereto in the Credit Agreement.

Thank you for the invitation to meet with you in person on a without prejudice basis to discuss the status of the Project, potential solutions to the current issues on the Project, and the potential path forward to completion of the Project. We believe the meeting was productive and that all of the various parties at the meeting are clearly aligned in their desire to ensure that work resumes on the Project as quickly as possible and that the Project is completed with minimal further delays.

As a follow-up to that meeting, we write to set out certain issues that we have identified as critical issues to be addressed from the Lenders' perspective in connection with any replacement of Project Co and any engagement of EllisDon to complete the Project. While the list below is not exhaustive, it is intended to serve as a basis for further discussion among the various stakeholders, as well as EllisDon, and to identify immediate next steps to be addressed by the parties.

1. Sources of Liquidity to Reach Interim Completion

As discussed at the meeting, one of the key immediate issues that must be addressed is the identification of a source of liquidity to fund the cost of the remaining construction work necessary to achieve Interim Completion. The Total Commitment of the Lenders under the Credit Agreement is \$124,591,254, and to date a total of \$122,294,178 has been advanced to Project Co (and the same amount has been paid by Project Co to the Construction Contractor under the Construction Contract), meaning that the total amount still potentially available to be advanced by the Lenders is \$651,262. Since the Project was originally structured such that the Credit Facility is the only source of liquidity available until the Interim Completion Payment is received, to the extent that the cost of the remaining construction work necessary to achieve Interim Completion exceeds \$651,262, an additional source of liquidity will need to be identified. Therefore, it is critical that the parties collectively assess whether such a shortfall in fact exists and, if so, determine the quantum of the shortfall and identify the additional source of liquidity.

We note that the Lenders will be unable to increase their Total Commitments, since the amounts to be paid under the Project Agreement would then be insufficient to fully repay the Lenders, and therefore the potential additional sources exclude the Lenders. One potential source of liquidity raised at the meeting was the payment in respect of any Variations that have not yet been paid under the Project Agreement, and we understand that CMH and Infrastructure Ontario are assessing this to determine the quantum of these amounts and whether they can be paid under the Project Agreement prior to Interim Completion, and we look forward to further details regarding these amounts.

2. Revisions to Project Schedule and the Project Agreement

Under the Project Agreement the Scheduled Substantial Completion Date is currently March 31, 2019, and the Longstop Date is therefore September 27, 2019. In addition, assuming the Lenders deliver a Step-In Notice to CMH under the Lenders' Direct Agreement in connection with a replacement of Project Co (or the Construction Contractor), CMH has agreed under Section 6.3(b) of the Lenders' Direct Agreement that it will not exercise any right it has to terminate the Project Agreement provided the Work under the Project Agreement is completed on or before the date falling 180 days after the Longstop Date, or March 25, 2020. Therefore, as part of any engagement of EllisDon and any revisions to the Project Schedule, it will be necessary to determine whether, in EllisDon's view, completion of the remaining Work is achievable by March 25, 2020 and, if not, for the various stakeholders to agree upon a new Longstop Date that is realistic and achievable.

3. Revised Financial Model

The original Financial Model, prepared at Financial Close, was prepared on the basis of the original Project Schedule, and therefore calculated, among other things, total financing costs based on the receipt of the Interim Completion Payment and the Substantial Completion Payment on the original Scheduled Interim Completion Date and original Scheduled Substantial Completion Date, respectively. The calculations in the original Financial Model are clearly no longer accurate, and as part of any engagement of EllisDon the Financial Model will need to be revised to recalculate, among other things, the additional financing costs that will be incurred prior to completion of the Project. We assume that all increased financing costs over those set out in the original Financial Model, which are the responsibility of the Construction Contractor under the Construction Contract through its obligation to pay Delay Liquidated Damages, will be funded by Zurich to the Lenders directly.

4. Vacating Liens

As discussed at the meeting, we understand that Zurich and Perini Management Services will continue to work with the various subcontractors of the Construction Contractor to ensure that amounts which are currently outstanding are paid and existing liens are either vacated or bonded off. We continue to support this approach, but confirm that the advance of any additional amounts by the Lenders under

the Credit Agreement will require clear title searches of the Project Lands, as contemplated in the condition precedent to advances in Section 8.2(13) of the Credit Agreement.

5. Replacement of Project Co

As discussed at the meeting, there are various ways that the engagement of EllisDon can be structured. From the Lenders' perspective, our initial preference is for the shares of Project Co (currently wholly owned by Bondfield Construction Company Limited and pledged in favour of the Lenders) to be transferred to an EllisDon entity, either voluntarily by Bondfield Construction Company Limited or by way of enforcement of the Lenders' security, together with appropriate releases from existing liabilities in favour of EllisDon and an assignment of the Construction Contract to, or entry into a replacement Construction Contract on substantially similar terms with, an operating EllisDon entity. While this will require further discussion and agreement with EllisDon, we believe that implementing the engagement of EllisDon in this manner will be the most efficient from a documentation perspective, and ensure that the engagement proceeds as quickly as possible.

6. Continued Performance Support

Under the terms of the Performance Bond, provided that the Balance of the Construction Contract Price is paid, Zurich has agreed to make available sufficient funds to pay to complete the Construction Contractor's obligations under the Construction Contract. While this ensures completion of the remaining Work under the Construction Contract, and the payment of any increased costs necessary to do so (up to the Bond Amount of \$87,377,250), we would like to understand from Zurich whether the obligations of EllisDon under the new (or assigned) Construction Contract will continue to be bonded obligations, or whether new performance security will be provided by EllisDon. For example, if EllisDon subsequently and independently defaults under the Project Agreement in the future, is Zurich agreeing that it will remedy such a default of EllisDon in accordance with the existing Performance Bond? If not, then comparable replacement performance support will be necessary from EllisDon.

We look forward to continued discussion with you, and with EllisDon, to address the above issues and working with you to ensure that work resumes on the Project as quickly as possible and that the Project is completed with minimal further delays.

Yours very truly,

BANK OF MONTREAL, as Agent

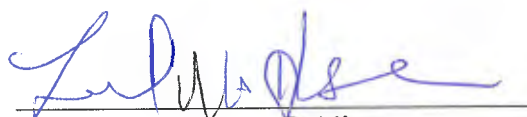
Per:



Eden Orbach
Senior Manager

TAB I

This is **Exhibit "I"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

From: [MacLellan, James W.](#)
To: EDEN.ORBACH@bmo.com
Cc: [Adrian Braganza \(adrian.braganza@zurichna.com\)](mailto:adrian.braganza@zurichna.com); [Bulat, Dražen](#); John.McKendrick@infrastructureontario.ca
Subject: Zurich - Bondfield - Cambridge
Date: Friday, October 12, 2018 4:31:54 PM
Attachments: [Cambridge Memorial Hospital - Follow-up from Oct 5 Meeting.pdf](#)
[TOR01 - #7629297-v1-Cambridge Completion Contract.DOCX](#)
[14451 - CAMBRIDGE -- 47 R1 - June 30-2018.pdf](#)
[TOR01 - #7631485-v1-Cambridge Mitigation Funding Agreement.DOCX](#)

Eden,

Thank you for your letter dated October 10, 2018, Zurich has asked me to respond. From your letter it appears that there are a number of issues that need to be resolved related to the Project structure that do not include Zurich. We have been instructed to provide comments on the letter so that there is a clear understanding of Zurich's position under the Performance Bond in respect of this Project given that there has been no claim on the Performance Bond to date.

1. Sources of Liquidity to Reach Interim Completion

As discussed at the meeting, one of the Multiple Dual Obligees will have to note Bondfield in default in order to trigger an obligation for Zurich to respond under the Performance Bond. The Multiple Obligee is required to make available the Balance of the Construction Contract price to fund completion of the remaining work. We understand that the most recent Certificate of Payment (attached) identifies the Balance of Construction Price to be \$59,792,09.17 Balance Unpaid under Contract plus \$12,739,224.94 holdback together with applicable taxes which is required to be made available to the Surety for completion of the Work.

The issue of variations requires further discussion. The Performance Bond only covers the original Contract between Project Co and Bondfield, not the separate arrangements between Cambridge and Bondfield for variations. In order to have those variations completed, we expect that separate arrangements will need to be made between Cambridge and EllisDon, such that we do not expect any of the variation funds to be available for the purpose of funding completion of the Original Contract under the Performance Bond.

2. Revisions to Project Schedule and the Project Agreement

Zurich awaits a Notice of Default and claim under the Bond, however, we would expect that EllisDon would be able to provide a date to achieve Interim Completion approximately 30 days following its mobilization on the site.

3. Revised Financial Model

As discussed, the Performance Bond covers only sticks and bricks and does not cover any costs associated with financing. Zurich will continue to comply with its obligations under the Demand Bond.

4. Vacating Liens

As noted, Zurich continues to deal with the various claims for liens registered against the title to CMH in cooperation with CMH and is working towards clearing title of all the liens. We note however, that while liens may impact on the flow of funds, they should not be an impediment to having the work started as soon as possible.

5. Replacement of Project Co

As also discussed at the meeting, under the Performance Bond, Zurich is only responsible for guaranteeing the performance of the Construction Contract. The desire of your client to have a replacement Project Co should not hold up the re-let of the Completion Work once the Notice of Default has been issued.

6. Continued Performance Support

The original Bonds will continue in operation for the Completion Work and no new Performance Security will be delivered by EllisDon.

We have attached a draft Completion Contract between the Completion Contractor and the Multiple Obligee together with a Mitigation Funding Agreement between Surety and Multiple Obligee regarding funding the Completion Work.

Are you able to advise which Multiple Obligee will be noting Bondfield in default, which Obligee will be making demand on the Bond and which Multiple Obligee will be entering into the various Agreements in order to complete the work.

Let me know if you have any questions.

Thanks

James

James W. MacLellan

Partner

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

Borden Ladner Gervais LLP | It begins with service

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blg.com |

From: ORBACH, EDEN

Sent: October-10-18 3:02 PM

To: 'pgaskin@cmh.org'; adrian.braganza@zurichna.com; McKendrick, John
(John.McKendrick@infrastructureontario.ca)

Cc: Julien, Stanley

Subject: Follow-up Letter from Oct 5 Meeting

John, Patrick, Adrian,

Attached please find a follow-up note from BMO, acting as Agent for the Lenders, as follow-up from the Oct 5 meeting.

If you have any questions, please do not hesitate to reach out.

Thanks,

-Eden

Eden Orbach, CFA

BMO Bank of Montreal || Special Accounts Management Unit

First Canadian Place, 7th Floor, 100 King St. West, Toronto, ON. M5X 1A1


(T) 416.643.2474 || (F) 416.643.1653

***** PLEASE NOTE *****

This message, along with any attachments, is for the designated recipient(s) only and may contain privileged, proprietary, or otherwise confidential information. If this message has reached you in error, kindly destroy it without review and notify the sender immediately. Any other use of such misdirected e-mail by you is prohibited. Where allowed by local law, electronic communications with Zurich and its affiliates, including e-mail and instant messaging (including content), may be scanned for the purposes of information security and assessment of internal compliance with company policy.

TAB J

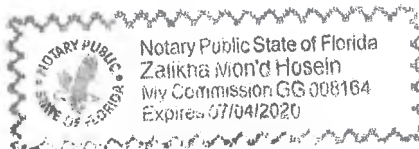
This is **Exhibit "J"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

FULL AND FINAL RELEASE

KNOW ALL PERSONS BY THESE PRESENT that **2423402 Ontario Inc.**, hereinafter referred to as the "Releasor" (on its own behalf and on behalf of its past and present heirs, executors, administrators, successors, predecessors, officers, directors, employees, representatives, partners, shareholders, agents, members, affiliated or related corporations, associates, assigns and insurers, where applicable), in consideration of the payment of the all-inclusive sum of **TEN DOLLARS (\$10.00)**, the receipt and sufficiency of which is hereby irrevocably acknowledged, hereby irrevocably remises, releases, acquits and forever discharges, **BONDFIELD CONSTRUCTION COMPANY LIMITED**, hereinafter referred to as the "Releasee" (which term includes its past and present heirs, executors, administrators, successors, predecessors, officers, directors, employees, representatives, partners, shareholders, agents, members, associates, assigns and insurers, where applicable) from any and all past, present or future claims, actions, causes of action, suits, debts, damages, costs, penalties, indemnities, warranties, claims over, liabilities, proceedings, prosecutions, charges, complaints, demands, damages, loss or injury, whether at law or in equity, of whatever nature or kind, which the Releasor ever had, now has or may hereafter have against the Releasee, whether known or unknown or unanticipated, and whether existing now or arising in the future, arising from or relating to:

1. Delay in performing the Work or achieving Substantial Completion of the Work or Final Completion of the Work under the Construction Contract (the "Construction Contract") between the Releasor and Releasee dated August 28, 2014 for the construction of the Cambridge Memorial Hospital Redevelopment;
2. Direct Losses, Indirect Losses or Liquidated Damages under the Construction Contract;
3. Failure to achieve the Substantial Performance Date or the Final Completion Date; and
4. Claim by Cambridge Memorial Hospital against Releasor.

THIS RELEASE shall be binding upon and enure to the benefit of the Releasor and Releasee and their respective heirs, executors, administrators, successors, lenders, predecessors, officers, directors, employees, representatives, partners, shareholders, agents, members, associates and assigns.

THE RELEASOR hereby declares that it fully understands the terms of this settlement, has received independent legal advice prior to executing this document, and that it voluntarily accepts the consideration offered for the purpose of making full and final compromise and settlement of all claims, demands and issues as herein noted.

AND THE RELEASOR acknowledges and agrees that, save for the terms and conditions as set out herein, it has not been induced to execute this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting this Release except as is contained herein.

AND FOR THE SAID CONSIDERATION the Releasor covenants and warrants that (i) it has not assigned to any persons, partnerships, corporations or other entities any of the matters, claims, demands or issues released herein or for which it has agreed herein not to make or continue any existing, further or other claims and (ii) that it has the full right and authority to release the matters released herein.

IT IS FURTHER AGREED and understood that the Releasor will not make or continue any existing, further or other claim or demand or take or continue any existing, further or other proceedings in any jurisdiction against any other person, firm, partnership, business, corporation or other entity who or which might claim contribution or indemnity from the Releasee, under the provisions of any statute or otherwise, for the matters released herein.

IN THE EVENT THAT the Releasor has or should hereafter make or continue any existing, further or other claim or demand, or commence or threaten to commence any claim or proceeding, in respect of the matters released herein, against the Releasees or any one of them, or against any person, firm, partnership, business, corporation or other entity who or which may claim contribution or indemnity against the Releasee, for or by reason of any cause, matter or thing released or included in this Release, this document may be raised as and shall be agreed to be an estoppel and complete bar to any such claim, demand, action, chose in action, suit, proceeding or complaint.

AND FURTHERMORE, it is agreed and understood that, with respect to the immediately preceding paragraph, in the event that for any reason this Release shall not be found by a Court, Tribunal, or other body with decision-making authority to be an estoppel and complete bar to any such claim, demand, action, chose in action, suit, proceeding or complaint, the Releasor agrees to immediately defend and save harmless, at its own cost, and promptly and fully indemnify the Releasee from, against, for and in respect of and pay any and all damages, losses, obligations, liabilities, claims, encumbrances, deficiencies, judgments, costs and expenses incidental to, suffered, sustained, incurred or required to be paid by the Releasee as a result of any suit, action, investigation, claim or proceeding against the Releasee by any person, firm, partnership, business, corporation or other entity arising from or related to the matters released herein.

AND IT IS FURTHER UNDERSTOOD AND AGREED that the Releasor will keep the terms and conditions of this Release confidential and not directly or indirectly divulge or disclose same to any person, entity or media representative, to be disclosed only (i) as required by law in which event the fact that the settlement agreement was made without any admission of liability will be disclosed contemporaneously; or (ii) to her accountants, auditors, financiers or other professional advisors on a confidential basis.

IT IS UNDERSTOOD AND AGREED that the giving of the before mentioned consideration is not to be deemed as any admission of liability on the part of the Releasee whether in respect of the matters released herein or otherwise and any such liability is specifically and expressly denied.

THIS RELEASE may be executed either in original, PDF and/or faxed form and any signature received by way of a faxed transmission or PDF or a photocopy of such faxed or PDF transmission, shall be deemed to constitute the original signature of the party to this Release.

AND THE RELEASOR acknowledges and agrees that the invalidation or any provision or term contained in this Release shall not affect the validity of any other provision or term herein.

IN WITNESS WHEREOF the undersigned has hereunto set its hands.

Date: October 19, 2018



2423402 Ontario Inc.

Per:

I have the authority to bind the corporation

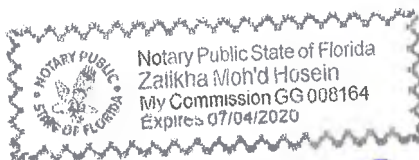
TAB K

This is **Exhibit "K"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

McCarthy Tétrault LLP
 PO Box 48, Suite 5300
 Toronto-Dominion Bank Tower
 Toronto ON M5K 1E6
 Canada
 Tel: 416-362-1812
 Fax: 416-868-0673



Geoff R. Hall
 Partner
 Direct Line: (416) 601-7856
 Direct Fax: (416) 868-0673
 Email: ghall@mccarthy.ca

Assistant: Galluzzo, Michelle
Direct Line: 416-601-8200 (542605)
Email: mgalluzzo@mccarthy.ca

October 22, 2018

Via Email (JMacLellan@blg.com)

James W. MacLellan
 Partner
 Borden Ladner Gervais LLP
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Suite 3400
 Toronto ON M5H 4E3

Dear Mr. MacLellan:

Re: Performance Bond No. 6342957 dated August 14, 2014 (the “Performance Bond”) with Zurich Insurance Company (“Zurich”) as surety, relating to the redevelopment of Cambridge Memorial Hospital (“CMH”) under a Project Agreement dated August 28, 2014 (the “Project Agreement”) and a Construction Contract dated August 28, 2014 between 24223402 Ontario Inc. and Bondfield Construction Company Limited (the “Construction Contractor”), and relating to a Credit Agreement dated August 28, 2014 with Bank of Montreal as administrative agent

Thank you for the productive meeting on October 18, 2018. I write to follow up on that meeting.

As you know, it is clear that there will be a call on the Performance Bond as a result of various defaults of which you are aware. As you also know, the Agent is seeking clarity on certain issues before the technical step of calling on the Performance Bond is taken. Four key issues relating to positions taken by Zurich that must be resolved are as follows:

1. Coverage of Set-off/Indemnity and Flow-Through Amounts Under the Performance Bond
2. Coverage of Increased Interest Costs Under the Performance Bond
3. Commitment of Holdback Amount
4. Availability of Liquidity Throughout the Project

Coverage Under the Performance Bond (Issues #1 and 2)

The Agent believes that, properly interpreted, set-off/indemnity, flow-through and increased interest amounts will be covered by the Performance Bond. The Agent does not accept Zurich's position that the Performance Bond covers only “sticks and bricks” and only obligates Zurich to build the building following a call on the Performance Bond. Rather, the Performance Bond

applies to all of the Construction Contractor's obligations under the Construction Contract. In particular:

- Set-off/indemnity costs arise due to a failure by the Construction Contractor to perform work as required under the Construction Contract, leading to a failure under the Project Agreement and claims and deductions by CMH. Any such claim or deduction by CMH under the Project Agreement automatically gives rise to a right for Project Co to make an identical claim or deduction under the Construction Contract. In particular, pursuant to Section 33.1 of Appendix A to the Construction Contract, the Construction Contractor is required to indemnify Project Co for all amounts for which Project Co is required to indemnify CMH under the Project Agreement. Providing coverage for costs like these that result from the Construction Contractor's defaults is the very foundation of the Performance Bond.
- Similarly, flow-through costs - such as claims made by CMH for failure by Project Co to pay utilities - arise from a failure by the Construction Contractor and give rise to: (a) a right for Project Co to make a claim under the Construction Contract for such amounts; and (b) a default under the Construction Contract. Notably, the Construction Contractor's failure to pay such amounts has resulted in a Contractor Event of Default pursuant to Section 26.1(a)(ix) of Appendix A to the Construction Contract, and a demand could be made under the Performance Bond for this default alone, plainly undermining any suggestion that it is not covered by the Performance Bond or the argument that only "sticks and bricks" are covered.
- Where defaults are made by the Construction Contractor – particularly where the Construction Contractor defaults rise to the level of requiring a claim under the Performance Bond – it causes delay, which in turn increases interest costs, and results in the obligation of the Construction Contractor to pay Liquidated Damages. These Liquidated Damages are separate from basic financing costs as they are caused by the Construction Contractor's defaults, which again are precisely the costs that are properly covered by the Performance Bond. In addition, Section 2(a) of the Construction Contract clearly states that the Construction Contractor's obligations in respect of Liquidated Damages shall not be construed as any obligation related to the Financing or the Cost of the Financing.
- In *Whitby Landmark Development Inc. v. Mollenhauer Construction Limited* (2003), 67 O.R. (3d) 628 (C.A.), the Ontario Court of Appeal interpreted a performance bond with virtually identical language to the Performance Bond (with none of the differences in language being material to the present issue) and rejected the argument that the performance bond in that case (also issued by Zurich) was limited to the physical construction work under the construction contract. Instead, the Ontario Court of Appeal held that the performance bond applied to all of the contractor's obligations under the construction contract. While as you noted in our meeting the Saskatchewan Court of Appeal has disagreed with *Whitby Landmark*, the Performance Bond is expressly governed by Ontario law, so Saskatchewan law is frankly irrelevant. *Whitby Landmark* is binding in Ontario, it is directly on point, and it directly contradicts your "sticks and bricks" theory.

We request Zurich's acknowledgement that set-off/indemnity, flow-through and increased interest amounts will be covered by the Performance Bond.

Holdback Amount (Issue #3)

As you know, pursuant to the Performance Bond, once a demand is made and option #3 is selected, Zurich is obliged to, among other things, make available as work progresses "sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Construction Contract, less the Balance of the Construction Contract Price" as well as paying all expenses incurred by the Obligee as a result of the Construction Contractor's defaults relating to the performance of work under the Construction Contract, up to the Bond Amount.

The definition of "Balance of the Construction Contract Price" in the Performance Bond is: "...the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Contract Contract."

Unlike the definition used in the Performance Bond, the definition of "Balance of the Construction Contract Price" used in the draft Mitigation Funding Agreement that you provided to us is: the Balance of Contract Funds (with reference to a calculation) "including Holdback". Zurich also goes further to seek an agreement that "[t]he Multiple Obligee shall pay to the Surety, or assign to the Surety any right or interest therein, any holdback amounts referred to in Schedule "B". In other words, Zurich is using an amended definition of "Balance of the Construction Contract Price" and seeking an agreement that the Lenders agree now to pay to Zurich the Holdback amounts without any deduction.

The definition of the Balance of the Construction Contract in the Performance Bond refers to the amount "payable to the Principal under the Construction Contract". The amount that is payable to the Construction Contractor under the Construction Contract is subject to prior-ranking claims of the Lenders for certain deductions, which may be made from the Holdback amounts. Therefore, it does not necessarily include the entire Holdback amount that Zurich now seeks to include.

The purpose of the Bonds was to keep the Lenders whole. The position now advanced by Zurich is a change to the original bargain that could leave the Lenders with less than full recovery. Doing so would be contrary to the representations made by Zurich with respect to the nature of the Bonds that the Lenders relied upon and an inappropriate over-reach that attempts to secure greater funds for Zurich's benefit than was intended in the bargain reached among the parties.

Accordingly, we seek your confirmation that Zurich will not attempt to over-ride the original bargain by requiring a present confirmation that the entire Holdback be paid or assigned to it.

Liquidity Throughout the Project (Issue #4)

You have indicated that Zurich would make payments on a monthly basis for any deficiency between the payment that would have been made under the Construction Contract and the actual costs incurred. As you know, due to the structure of this project and its financing, at certain stages there may be insufficient availability under the credit facility to make the payment

that would have been made under the Construction Contract in a given month even though the balance of the Construction Contract price is assured upon completion.

We request your confirmation that, once the demand is made under the Performance Bond, Zurich agrees to advance funds each month to satisfy the actual costs incurred that exceed the availability under the credit facility provided that it is assured that upon completion of the Project and delivery of the holdback the balance of the Construction Contract will be paid.

Next steps

We are awaiting a resolution of the above issues to make a claim under the Performance Bond, and are considering options if a consensual resolution cannot be reached. One option we are considering is to bring an application to the Ontario Superior Court for an interpretation of the Performance Bond to answer the foregoing questions. However, we are mindful that this step would entail significant delay in circumstances in which time is of the essence. We are therefore hopeful that an application will not be necessary.

We look forward to discussing this matter with you further.

Yours truly,

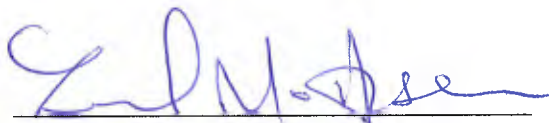


Geoff R. Hall
GRH/mg

c: Stephen Furlan
Heather L. Meredith
Morgan Troke

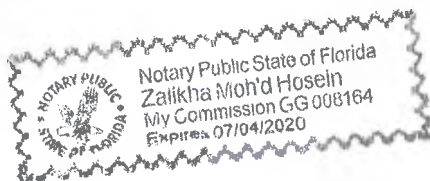
TAB L

This is **Exhibit "L"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

From: [MacLellan, James W.](#)
To: [Hall, Geoff R.](#)
Cc: [Furlan, Stephen](#); [Meredith, Heather L.](#); [Troke, Morgan](#)
Subject: Zurich - Bondfield - Cambridge
Date: Monday, October 29, 2018 9:27:49 AM
Attachments: [LT McLellan - Oct. 22, 2018.pdf](#)

Geoff

Further to my call with Heather on Friday, Zurich has considered your letter dated October 22 and as your client is aware, Zurich disagrees with your arguments. We will not be responding on a line-by-line basis but please do not take that as acceptance of any particular argument.

The Performance Bond provided by Zurich operates in accordance with its terms. Underpinning your letter is the concept that the “the purpose of the Bonds was to keep the Lenders whole”. This is concept fundamentally incorrect. The purpose of the Performance Bond is to have the Surety arrange for completion of the work in the event of a Construction Contractor default. So long as the Obligee (or in this case one of the Multiple Obligees) performs the duties of the Obligee in the Construction Contract then the Surety will perform. Importantly it is a condition of the Performance Bond that the Obligee (or in this case the Multiple Obligee) make available the Balance of the Construction Contract Price to pay for the unfinished Construction Work. The Balance of the Construction Contract Price is clearly defined in the Performance Bond as being: *“the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract”*. Also note that the statutory 10% holdback under the *Construction Act* is not a “security” for the Lenders and must be made available as part of the Balance of the Construction Contract Price.

It is our understanding that Bondfield has been noted in default and so Zurich has been assisting Bondfield to remedy the default with the full knowledge of the Multiple Obligees. But as you note in the letter, demand as not yet been made under the Performance Bond. Consistent with the ongoing discussion Zurich stands ready, willing and able to perform its obligations under the Performance Bond so long as one of the Multiple Obligee’s commits to pay the Balance of the Construction Contract Price to the Completion Contractor. While Zurich understands that there are issues amongst the Owner and Lenders related to the decision to allow the Project to be extended well beyond the original completion date, the Surety is not responsible for such decisions or the consequences.

To be clear Zurich is not proposing that any party waive any rights to advance the legal arguments raised in your letter. To the contrary, in paragraph 16 of the Mitigation Funding Agreement which we sent on October 12, there is an express reservation of rights paragraph.

In order to prevent any further deterioration in the Project, we would ask that one of the Multiple Obligees commit to perform the Obligee’s obligations so that the Surety can make arrangements to complete the Work in accordance with our October 12 email and the draft completion documents attached thereto.

Given the circumstances set out above and Zurich’s cooperation to date, we will assume the reference to “bad faith” raised in the call on Friday was done in error.

We will continue to wait to hear from you.

James

<image002.jpg>

James W. MacLellan

Lawyer

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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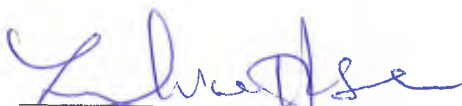


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TAB M

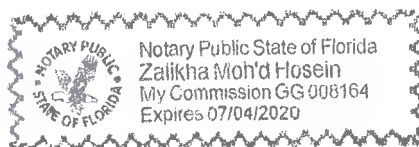
This is **Exhibit "M"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



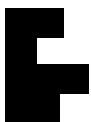
Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19



From: MacLellan, James W. [mailto:JMACLELLAN@blg.com]
Sent: Wednesday, November 21, 2018 11:49 AM
To: Meredith, Heather L.
Subject: [EXTERNAL] Zurich - Cambridge - Performance Bond

Heather

Zurich has received your client's letter purporting to make a claim under the Performance Bond for Cambridge project. We are instructed not to debate the contents of the letter but to pursue a completion arrangement consistent with the terms of the performance bond.

As you know the performance bond guarantees performance of the construction contract and that the party making the claim under the performance bond (if it is not project co) has to insert itself into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond. Please confirm that this has taken place.

Assuming that your client is now the contracting party under the construction contract and the party in a position to make the claim under the performance bond, we refer to our email of October 12, 2018 wherein we provided the agreements to facilitate a completion arrangement. We would ask for your comments on the two agreements and confirmation that your client will make the Balance of Construction Contract Price available as calculated in the October 12, 2018 email. Zurich has for some time been ready to make arrangements for the completion of the construction contract and we await the finalization of the completion documents so that Ellis Don can begin the completion work.

Thanks

James

James W. MacLellan

Partner

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

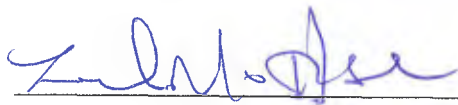
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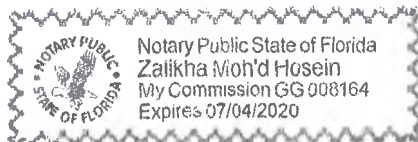
TAB N

This is **Exhibit "N"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

COUNTY: BROWARD
STATE: FL



5-31-19

From: [Meredith, Heather L.](#)
To: [MacLellan, James W.](#)
Cc: [Troke, Morgan](#); [Hall, Geoff R.](#); [Furlan, Stephen](#)
Subject: RE: Zurich - Cambridge - Performance Bond - Without Prejudice
Date: Friday, November 23, 2018 8:33:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image004.png](#)
[image005.png](#)
[image006.jpg](#)
[DOCS-#18455548-vpdf-Cambridge Completion Contract \(MT Comments\).pdf](#)
[DOCS-#18455158-vpdf-Cambridge Mitigation Funding Agreement \(MT Comments\).pdf](#)
[DOCS-#18455548-v2-Cambridge Completion Contract \(MT Comments\).docx](#)
[DOCS-#18455158-v2-Cambridge Mitigation Funding Agreement \(MT Comments\).docx](#)

James,

Please find attached a revised Mitigation Funding Agreement and Completion Contract, with blacklines to the versions of those agreements that you previously provided. These drafts are subject to comments from our clients but we are providing them in the interests of advancing our discussions. As you will see, the proposed revisions seek to defer the issues that have arisen while providing comfort to the replacement contractor and proceeding in accordance with the bond.

As you know, the Lenders have made a demand under the Performance Bond and do not agree that there are any further steps that must be taken to call on the bond. They are eager to move this matter forward and we are hopeful that by providing these revised agreements to you, we will be able to work towards having construction resume expeditiously. In that regard, we propose scheduling a time early next week to discuss these agreements in an effort to finalize them. Please let us know your availability.

We also continue to believe that direct discussions between the Agent and Zurich would be useful. We understand that your client has been quite busy but BMO would appreciate hearing from your client to coordinate such discussions as soon as possible.

Sincerely,



Heather Meredith
 Partner | Associée
 Bankruptcy & Restructuring | Faillite et restructuration
 T: 416-601-8342
 C: 416-725-4453
 F: 416-868-0673
 E: hmeredith@mccarthy.ca

McCarthy Tétrault LLP
 Suite 5300
 TD Bank Tower
 Box 48, 66 Wellington Street West
 Toronto ON M5K 1E6

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From: MacLellan, James W. [mailto:JMACLELLAN@blg.com]
Sent: Wednesday, November 21, 2018 11:49 AM
To: Meredith, Heather L.
Subject: Zurich - Cambridge - Performance Bond

Heather

Zurich has received your client's letter purporting to make a claim under the Performance Bond for Cambridge project. We are instructed not to debate the contents of the letter but to pursue a completion arrangement consistent with the terms of the performance bond.

As you know the performance bond guarantees performance of the construction contract and that the party making the claim under the performance bond (if it is not project co) has to insert itself into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond. Please confirm that this has taken place.

Assuming that your client is now the contracting party under the construction contract and the party in a position to make the claim under the performance bond, we refer to our email of October 12, 2018 wherein we provided the agreements to facilitate a completion arrangement. We would ask for your comments on the two agreements and confirmation that your client will make the Balance of Construction Contract Price available as calculated in the October 12, 2018 email. Zurich has for some time been ready to make arrangements for the completion of the construction contract and we await the finalization of the completion documents so that Ellis Don can begin the completion work.

Thanks

James

James W. MacLellan

Partner

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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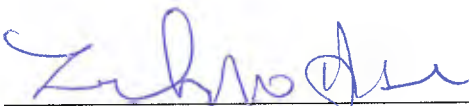
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TAB 0

This is **Exhibit "O"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673



Heather L. Meredith
Direct Line: (416) 601-8342
Direct Fax: (416) 868-0673
Email: hmeredith@mccarthy.ca

December 7, 2018

Via Email (bissell@gsnh.com & forte@gsnh.com)

Mr. Brendan Bissell
Partner
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Mario J. Forte
Counsel
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Dear Sirs:

Re: Next Steps following demand under Performance Bond No. #6342957 dated August 28, 2014, together with the Multiple Obligee Rider thereto (collectively, the "Bond") by Alvarez & Marsal Canada Inc. as receiver (in such capacity, the "Receiver") appointed by order dated December 6, 2018 (the "Appointment Order") of the Property (as defined therein) of 2423402 Ontario Inc. ("Project Co") for the sole purpose of carrying out the terms of the Appointment Order

As you know, we are counsel for Bank of Montreal, as administrative agent (the "**Agent**"), and each of the financial institutions and other entities from time to time parties as lenders (the "**Lenders**") to the Credit Agreement made as of August 28, 2014 among 2423402 Ontario Inc. ("**Project Co**") and the Lenders. We write to you further to the appointment of the Receiver yesterday.

We understand that the Receiver, on behalf of Project Co, will be making a call on Bond today. In anticipation of Zurich's prompt response to that demand - which deals with the allegation previously raised by your client, Zurich Insurance Company Limited ("**Zurich**"), regarding the demand on the Bond made by the Lenders on November 16, 2018 - we would like to move forward to meet with you to discuss next steps and develop a path forward as quickly and efficiently as possible.

To that end, can you please advise if you are available on Monday, December 10, 2018 for a meeting among counsel at our offices? We would then propose a meeting with clients for later in the week. Please let us know if you and your client would be available for such a discussion on Thursday, December 13, 2018.

Also, as we appreciate that you are new to this matter, please do not hesitate to reach out in advance of Monday with any questions that you may have with respect to the documents, the issues previously raised between Zurich and the Lenders and/or the manner in which the Lenders have proposed to move forward.

All in all, we are looking forward to beginning productive discussions as soon as possible to bring this matter to a resolution that will see construction resume at Cambridge Memorial Hospital.

Yours truly,



Heather L. Meredith

HLM/sa

TAB P

This is **Exhibit "P"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019


Notary Public

STATE : FL
COUNTY : BROWARD



5-31-19

December 7, 2018

CONFIDENTIAL

VIA COURIER

Zurich Insurance Company Ltd.

Surety Department
First Canadian Place,
100 King Street West Suite 5500, P.O. Box 290
Toronto, ON M5X 1C9

Attention: Karen Ramsey, Attorney-in-fact

Re: Demand Upon Performance Bond No. #6342957 dated August 28, 2014, together with the Multiple Obligee Rider thereto (collectively, the "Bond")

Reference is made to the Bond. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Bond.

Appointment as Receiver

As you are aware, pursuant to an order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated December 6, 2018 (as may be amended, restated or modified from time to time, the "**Appointment Order**"), Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. ("**Project Co**") acquired for, or used in relation to a business carried on by Project Co (the "**Property**") for the sole purpose of carrying out the terms of the Appointment Order and without taking possession or control of the Property. A copy of the Appointment Order is enclosed with this letter.

Contractor Performance Bond

As you are further aware, Project Co is an Obligee under the Bond. Pursuant to paragraph 27 of the Appointment Order, the Receiver was ordered to make a demand under the Bond for and on behalf of Project Co as soon as reasonably practicable and is empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of Project Co as the Receiver considers necessary or advisable to facilitate making such demand.

Please find enclosed a copy of a letter dated December 7, 2018 from the Receiver to the Principal, pursuant to which the Receiver notified the Principal of the occurrence of numerous events of default under the Construction Contract including, without limitation, failure to remove numerous encumbrances registered against title to the Site (as defined in the Construction Contract). The occurrence of each such event of default constitutes a Contractor Event of Default under the Bond.

The Principal is, and has been declared by the Obligee to be, in default in respect of its obligations to the Obligee under the Construction Contract, and the Obligee has duly performed all of its obligations thereunder. Accordingly, we hereby demand that the Surety promptly remedy the above-referenced Contractor Event of Default and all other Contractor Events of Default set out in the attached letter, or promptly select and carry out one of the other specified options available to the Surety pursuant to the Bond.

Yours very truly,

ALVAREZ & MARSAL CANADA INC., solely in its capacity as receiver, without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc., and not in its personal or corporate capacity

By: 

Name: Stephen Ferguson

Title: Senior Vice President

cc: Rocco Sebastiano (counsel to Bondfield Construction Company Limited)
Brendan Bissell (counsel to Zurich Insurance Company Ltd.)
Heather Meredith (counsel to Bank of Montreal, in its capacity as administrative agent)
Kyla Mahar (counsel to Cambridge Memorial Hospital)

Court File No. CV-18-610236-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 6th

JUSTICE HAINEY

)

DAY OF DECEMBER, 2018

)



IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Orbach sworn December 5, 2018 and the Exhibits thereto (collectively, the "**Affidavit**") and on hearing the submissions of counsel for each of the Applicant, A&M, Cambridge Memorial Hospital ("**CMH**"), Infrastructure Ontario ("**IO**"), Zurich Insurance Company Ltd. (the "**Surety**"), and the Debtor, and on reading the consent of A&M to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**") for the sole purpose of carrying out the terms of this Order and without taking possession or control of such Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property without taking possession or control of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (b) with the consent of the Applicant in consultation with CMH and IO, to enter into any agreements for and on behalf of the Debtor or cease to perform, repudiate or disclaim any contracts of the Debtor; and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) Bondfield Construction Company Limited ("**Bondfield**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor located at the offices of Bondfield and Bondfield shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records with respect to the Property, including the Project (as defined in the Affidavit).

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or

destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Nothing in this Order shall limit or restrict the rights of the Applicant to take action against Bondfield or to enforce any security granted by Bondfield in favour of the Applicant.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien; or (v) prevent Cambridge Memorial Hospital from asserting set-off rights against the Debtor arising under the Project Agreement, if any.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor.

EMPLOYEES

12. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor and not of the Receiver. The Receiver shall not be liable for any employee-related responsibilities or liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations or liability (i) under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation, or (ii) in respect of any of the Debtor's obligations or Property, including, without limitation, the Construction Agreement attached as Exhibit "F" to the Affidavit or the Project Agreement attached as Exhibit "G" to the Affidavit. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation. Unless further ordered by the Court, the Receiver will not be and shall not be deemed to be, in possession and control of any Property, including, without limitation, for the purposes of the BIA, the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation.

RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to the benefit of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

18. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to: (a) with the consent of the Applicant to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order; and (b) open one or more new accounts to hold any amounts borrowed pursuant to foregoing paragraph (a). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

22. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'https://www.alvarezandmarsal.com/CMH'.

23. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, electronic or facsimile transmission to the Debtor's creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. THIS COURT ORDERS that nothing in this Order shall:

- (a) prevent the Receiver from acting as a trustee in bankruptcy of the Debtor;

- (b) constitute or be deemed to constitute an exercise of "step-in rights" by the Applicant under Section 7 of the Lender's Direct Agreement (as such term is defined in the Affidavit); or
- (c) prevent the Applicant from appointing the Receiver as its Appointed Representative (as such term is defined in the Lender's Direct Agreement) or taking steps pursuant to the Lender's Direct Agreement.

26. THIS COURT ORDERS that nothing in this Order shall affect the Debtor's ability to perform its obligations under the Construction Contract or alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6342957 (the "**Performance Bond**"), Labour and Materials Payment Bond No. 6342957 or Demand Bond No. 6342958 (collectively, the "**Contractor Bonds**") issued by the Surety.

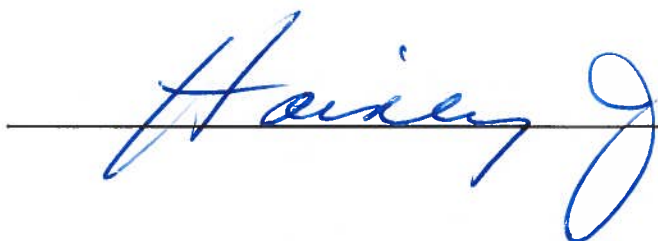
27. THIS COURT ORDERS that the Receiver shall make a demand under the Performance Bond for and on behalf of the Debtor as soon as reasonably practical and shall be empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of the Debtor as the Receiver considers necessary or advisable to facilitate making such demand. The Receiver shall not take or consent to any actions that would compromise recovery under the Contractor Bonds without written consent of the Applicant.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 06 2018

PER / PAR:



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ALVAREZ & MARSAL CANADA INC., the receiver (in such capacity and not in its personal or corporate capacity, the "**Receiver**") of the assets, undertakings and properties 2423402 ONTARIO INC. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of December, 2018 (the "**Order**") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

ALVAREZ & MARSAL CANADA INC., solely in
its capacity as Receiver of the Property, and not
in its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

Court File No. CV-18-610236-00CL

BANK OF MONTREAL and 2423402 ONTARIO INC.
Applicant Respondent

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced in Toronto

ORDER
(Appointing Receiver)

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
66 Wellington Street West
Toronto, ON M5K 1E6

Heather L. Meredith LSUC#48354R
Tel: 416-601-8342
Fax: 416- 868-0673
Email: hmeredith@mccarthy.ca

Geoff R. Hall LSUC#347010
Tel: 416-601-7856
Fax: 416-868-0673
Email: ghall@mccarthy.ca

Trevor Courtis LSUC#67715A
Tel: 416-601-7643
Fax: 416-868-0673
Email: tcourtis@mccarthy.ca
Lawyers for the applicant, Bank of Montreal

December 7, 2018

CONFIDENTIAL

Via Facsimile

Bondfield Construction Company Limited
407 Basaltic Road
Concord, ON L4K 4W8
Fax No.: 416-667-8462

Attention: Mr. John Aquino

Attention: Mr. Steven Aquino, Vice President

Re: Construction Contract dated as of August 28, 2014, between 2423402 Ontario Inc. ("Project Co") and Bondfield Construction Company Limited (the "Construction Contractor"), as such Construction Contract is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Construction Contract")

Dear Mr. Aquino:

Reference is made to the Construction Contract. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Construction Contract.

Appointment as Receiver

As you are aware, pursuant to an order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated December 6, 2018 (as may be amended, restated or modified from time to time, the "**Appointment Order**"), Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Project Co acquired for, or used in relation to a business carried on by Project Co (the "**Property**") for the sole purpose of carrying out the terms of the Appointment Order and without taking possession or control of the Property. A copy of the Appointment Order is enclosed with this letter.

Contractor Performance Bond

As you are further aware, Project Co is an Obligee under Performance Bond No. 6342957 dated August 28, 2014 between the Construction Contractor, as Principal, Zurich Insurance Company Ltd. (the "**Surety**"), as surety (the "**Contractor Performance Bond**"). The Contractor Performance Bond has been provided in support of the Construction Contractor's obligations under the Construction Contract. Pursuant to the terms of the Contractor Performance Bond, whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations under the Construction Contract, the Surety has agreed to promptly perform certain obligations set out in the Contractor Performance Bond.

Pursuant to paragraph 27 of the Appointment Order, the Receiver was ordered to make a demand under the Contractor Performance Bond for and on behalf of Project Co as soon as reasonably practicable and is empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of Project Co as the Receiver considers necessary or advisable to facilitate making such demand.

As set out in letters to the Construction Contractor and to Project Co dated November 5, 2018 and November 16, 2018 from Bank of Montreal, in its capacity as administrative agent (the “**Agent**”) in relation to a Credit Agreement dated as of August 28, 2014 between Project Co, the Agent and certain lenders (the “**Lenders**”), and in the letter by Cambridge Memorial Hospital (“**CMH**”) to Project Co dated August 10, 2018, copies of which were in each case provided to you, numerous events have occurred and continue to occur which constitute Contractor Events of Default under the Construction Contract. These include that the Construction Contractor has:

- failed to pay Liquidated Damages when due under the Contractor Support Agreement, dated as of August 28, 2014, which constitutes an event of default pursuant to Section 12 of the Construction Contract and a Liquidated Damages Default under Demand Bond 6342958 dated August 28, 2014;
- failed to remove numerous encumbrances registered against title to the Site within the time periods required under the Project Agreement, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract; and
- failed to maintain the Project schedule and achieve schedule milestones and is consequently unable to achieve Substantial Completion by the Longstop Date, which has had a material adverse effect on CMH and its ability to operate the Facility, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(iv) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract.

In addition, we also understand that there are now few workers on Site on a daily basis, and that construction activity on the Site has decreased such that the Construction Contractor has ceased performing the Work as required under the Construction Contract.

We hereby confirm and declare on behalf of Project Co that the Construction Contractor is in default of its obligations under the Construction Contract. As an Obligee under the Contractor Performance Bond, Project Co is entitled to make demand on the Surety under the Contractor Performance Bond and will be doing so concurrently with this letter.

Project Co expressly reserves all of its other rights, powers, privileges and remedies under the Construction Contract, applicable law or otherwise. The failure of Project Co to exercise any such rights, powers privileges and remedies is not intended, and shall not be construed, to be a waiver of any such rights or remedies pursuant to the Construction Contract or otherwise and nothing in this letter or any delay by Project Co in exercising any rights, powers, privileges and remedies under the Construction Contract or applicable law shall be construed as a waiver or modification of such rights, powers, privileges and remedies. This letter is not, and shall not be deemed to be, a waiver of, or a consent to, any default noncompliance, or otherwise now existing or hereafter arising under the Construction Contract.

The holding of any discussions between or among any or all of the Agent, the Lenders, the Construction Contractor, Project Co, the Surety, CMH or Infrastructure Ontario regarding the Project or proposals regarding amendments to, or modifications or restructurings of the Construction Contract shall not constitute any waiver of any breach, default or Contractor Event of Default or the obligations of the Construction Contractor under the Construction Contract or applicable law, nor shall it be construed as an undertaking by Project Co to continue such discussions or to enter into any such amendments, modifications or restructurings.

Yours very truly,

ALVAREZ & MARSAL CANADA INC., solely in its capacity as receiver, without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc., and not in its personal or corporate capacity

By: 

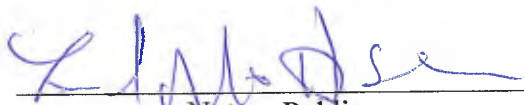
Name: Stephen Ferguson

Title: Senior Vice President

cc: Brendan Bissell (counsel to Zurich Insurance Company Ltd.)
Heather Meredith (counsel to Bank of Montreal, in its capacity as administrative agent)
Kyla Mahar (counsel to Cambridge Memorial Hospital)

TAB Q

This is **Exhibit "Q"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

**mccarthy
tétrault**

Heather L. Meredith
Partner
Direct Line: (416) 601-8342
Direct Fax: (416) 868-0673
Email: hmeredith@mccarthy.ca

Assistant: Fick, Kaitlin
Direct Line: (416) 601-8200 x542050
Email: kfick@mccarthy.ca

December 10, 2018

Via Email (bissell@gsnh.com and forte@gsnh.com)

Mr. Brendan Bissell
Partner
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Mario J. Forte
Counsel
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Dear Sirs:

Re: Performance Bond No. 6342957 dated August 28, 2014 between Bondfield Construction Company Limited ("Bondfield") and Zurich Insurance Company Ltd. ("Zurich"), together with the Multiple Obligee Rider thereto naming Cambridge Memorial ("CMH") and Bank of Montreal (the "Agent") as Additional Named Obligees (collectively the "Performance Bond")

We are counsel for the Agent and each of the financial institutions and other entities from time to time parties as lenders (the "**Lenders**") to the Credit Agreement made as of August 28, 2014 among 2423402 Ontario Inc. ("**Project Co**") and the Lenders. We write further to our letter of December 7, 2018 and your response late Friday that your client instructed you to advise that the meeting we proposed for today is "premature" such that you will not be in attendance. It is difficult to fathom how a meeting on between counsel for the Lenders and counsel for Zurich is premature at this stage in all of the circumstances and we remain deeply concerned that Zurich is failing to comply with its obligations under the Bonds and its duty to act in good faith.

Background: Discussions with Zurich and Call on the Bond

As you know, the Lenders and Zurich first engaged in discussions regarding the situation at CMH a number of months ago after CMH wrote to the Lenders on August 13, 2018 to provide a copy of a letter from CMH to Project Co dated August 10, 2018 outlining numerous Events of Default. Following a meeting on October 10, 2018, the Lenders wrote to CMH, Infrastructure Ontario and Zurich to thank each party for a constructive meeting and to set out a non-exhaustive list of issues that the Lenders identified as "critical issues to be addressed from the

Lenders' perspective in connection with any replacement of Project Co and any engagement of EllisDon to complete the Project."

Following the October 10, 2018 meeting, Zurich's former counsel responded. Instead of providing substantive responses, he raised a number of technical disputes including alleging that the Performance Bond only covers "sticks and bricks". He also provided a draft Completion Contract and Mitigation Funding Agreement that Zurich alleged would have to be signed by the party calling on the Performance Bond.

The Lenders met with Zurich promptly following receipt of Zurich's response and further wrote to Zurich on October 22, 2018 to set out serious points of concern with the proposed agreements and positions taken by Zurich.

The Lenders then engaged with Zurich and its counsel to seek to resolve the substantive points of disagreement and to find a path forward. A high-level meeting took place between Zurich's representative, Adrian Braganza, and BMO representatives on November 5, 2018. We are advised that, at that meeting, the parties tentatively scheduled a further meeting for November 8, 2018 but unfortunately, Mr. Braganza advised he could not attend that meeting. We are further advised that, despite follow-up from BMO and offers from BMO to meet or discuss on the weekend, Mr. Braganza was not able to meet for some time thereafter and that meeting was not rescheduled.

Accordingly, in a further effort to move matters forward, the Lenders took the step of calling on the Performance Bond on November 16, 2018. On November 21, 2018, after prodding Zurich for a response, Zurich's former counsel responded alleging that the party making a claim under the Performance Bond had to "insert itself into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond" and asking for comments on the Mitigation Funding Agreement and Completion Contract.

The Lenders strongly disagree that the Lenders were required to "insert" themselves by exercising step-in rights under the Lender Direct Agreement (a contract to which Zurich is not a party) in order to call on the Performance Bond. The Performance Bond, through the attached Multiple Obligor Rider, provides the Lenders with the ability to call on the Performance Bond. First, Bondfield is plainly in default under the Construction Contract – a fact that Bondfield itself has not disputed. Second, Bondfield has been declared to be in default in respect of its obligations to the Obligor under the Construction Contract. The letter sent by the Lenders to Bondfield on November 16, 2018 confirms and declares the default and, pursuant to the Multiple Obligor Rider, the Lenders are Additional Named Obligors, entitled to enforce the obligations of Bondfield and Zurich under the Performance Bond.

Accordingly, the Lenders made a demand under the Performance Bond, as they were entitled to do, on November 16, 2018. Zurich was required to "promptly select and carry out" one of the four options under the Performance Bond. It has failed to do so.

Notwithstanding the Lenders' position that a proper call has been made on the Performance Bond and that Zurich has failed to properly respond – and without prejudice to any arguments the Lenders may have as against Zurich in relation thereto – the Lenders continued to seek a path forward with Zurich. In particular, the Lenders:

1. Sent revised drafts of the Mitigation Funding Agreement and Completion Contract to Zurich's former counsel on November 23, 2018 and asked to engage in discussions with Zurich as soon as possible. Again, after prodding from BMO, Zurich's former counsel ultimately responded to suggest comments would be provided a week later. When it was pointed out such a delay – so close to the 120 deadline after which CMH would be entitled to terminate the Project Agreement between CMH and Project Co – Zurich's former counsel erroneously suggested that BMO had the draft documents "without comment" for 6 weeks. We responded that such a suggestion was incorrect and misleading given the meetings and discussions that had occurred and BMO's efforts to advance discussions with Zurich, with Zurich cancelling meetings or failing to respond; and,
2. Appointed a Receiver over Project Co on December 6, 2018 to take the step of calling on the Performance Bond on behalf of Project Co to obviate Zurich's allegation that the call on the Performance Bond by the Lenders was insufficient.

Current Status: Continued Delay Unacceptable

A demand on the Performance Bond by the Receiver on behalf of Project Co was delivered on December 7, 2018. There is now no question that a proper demand on the Performance Bond has been made. After engaging with Zurich for months to attempt to move this matter forward and receiving only alleged technical impediments – strongly disputed by the Lenders – or delays, it is now time to meet to resolve these matters.

With this goal in mind, we wrote on Friday to suggest a meeting today among counsel, with a client meeting later in the week. To then receive a response that a meeting is "premature" is confounding. The only changes that have occurred are:

1. There is now a Receiver appointed over Project Co – in a form consistent with requests made by Zurich – which has called on the Performance Bond on behalf of Project Co. This is not a step that slows down the process or makes further meetings "premature". Instead, it removes the alleged obstacle raised by Zurich; and
2. Zurich has new counsel. However, such new counsel – who are very experienced in matters such as this - have now been engaged for almost a week and, with time of the essence, this is no reason to delay a without prejudice meeting.

The Lenders are concerned that Zurich is not acting in good faith and its continued delay and unproductive responses are threatening to seriously prejudice the Lenders in this matter. The Lenders have been told that some of this delay results from the fact that Mr. Braganza is apparently the only contact for this matter at Zurich. If that is the case, it is either not prudent/appropriate or is a tactic to delay. In either event, it is not acceptable.

At this stage, two calls have been made upon the Performance Bond. Zurich failed to respond promptly to the first demand on the Performance Bond by the Lenders. There is now no debate but that a proper demand has been made on the Performance Bond by Project Co. We expect a "prompt" response to that demand as required by the Performance Bond.

If such a prompt response is not received, the Lenders will take appropriate steps in response, which may include seeking directions from the Court, seeking a remedy for Zurich's bad faith, and proceeding to confirm EllisDon as the replacement contractor and holding Zurich responsible for all costs and damages relating thereto.

The Lenders remain committed to completing the Project and would prefer a cooperative approach consistent with the cooperation the Lenders showed Zurich in agreeing to a reduction of the powers of the Receiver at Zurich's request.

Time is plainly of the essence. We ask you to please confirm when counsel and/or Zurich will be available to meet this week.

Yours truly,




Heather L. Meredith

HLM/kf

c. Steve Furlan, McCarthy Tétrault LLP
Geoff Hall, McCarthy Tétrault LLP

TAB R

This is **Exhibit "R"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19



dedicated to your success

R. BRENDAN BISSELL
Direct Dial 416-597-6489
Email bissell@gsnh.com
Our File No.: 100989.0001

December 11, 2018

DELIVERED BY EMAIL

Stephen Ferguson
Senior Vice President
Alvarez & Marsal Canada Inc.,
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1

Dear Mr. Ferguson:

RE: Demand Upon Performance Bond No. 6342957 dated August 28, 2014 together with the Multiple Obligee Rider thereto (the "Bond") issued by Zurich Insurance Company Ltd. ("Zurich") by Alvarez & Marsal Canada Inc. (the "Receiver") in its capacity as the court appointed receiver of 2423402 Ontario Inc. ("Projectco")

We act for Zurich. On behalf of our client, we hereby acknowledge receipt of the Receiver's demand dated December 7, 2018 on the Bond. Our client reserves its position, including all of its rights and defences, respecting the Bond.

As a preliminary matter, by copy of this letter to counsel for Bank of Montreal we request confirmation that the existing loan facility in favour of Projectco for which that bank is administrative agent remains in place and is available to Projectco for the project in question and we ask that we be advised how much remains available on that facility (inclusive of statutory holdback obligations, which we understand are disputed as to whether they reduce Zurich's obligations under the Bond).

We are reviewing this matter with our client and will respond more fully shortly.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:


R. Brendan Bissell

RBB:kj

c.c. Linc Rogers (counsel for the Receiver)
Heather Meredith (counsel for Bank of Montreal)
Kyla Mahar (counsel for Cambridge Memorial Hospital)
Rocco Sebastiano (counsel to Bondfield Construction Company Limited)
Adrian Braganza (Zurich Insurance Company Ltd.)
Mario Forte

TAB S

This is **Exhibit "S"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

**mccarthy
tétrault**

Heather L. Meredith
Partner
Direct Line: (416) 601-8342
Direct Fax: (416) 868-0673
Email: hmeredith@mccarthy.ca

*Assistant: Kaitlin Fick
Email: kffick@mccarthy.ca*

December 12, 2018

Via Email (bissell@gsnh.com and forte@gsnh.com)

Mr. Brendan Bissell
Counsel
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Mr. Mario J. Forte
Counsel
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Dear Sirs:

Re: Demand Upon Performance Bond No. 6342957 dated August 28, 2014 together with the Multiple Obligee Rider thereto (the "Bond") issued by Zurich Insurance Company Ltd. ("Zurich") by Alvarez & Marsal Canada Inc. (the "Receiver") in its capacity as the court appointed receiver of 2423402 Ontario Inc. ("Project Co")

We are in receipt of your letter to Stephen Ferguson of the Receiver dated December 11, 2018, copied to us as counsel to The Bank of Montreal in its capacity as agent (the "**Agent**") under the Credit Agreement dated August 28, 2014 (the "**Credit Agreement**") between Project Co, the Agent and each of the financial institutions and other entities from time to time parties thereto (collectively, the "**Lenders**").

Credit Facility

With respect to your question regarding the credit facility pursuant to the Credit Agreement (the "**Credit Facility**"), we can confirm as follows:

1. The Credit Facility presently has \$2,377,076.20 of remaining availability, subject to the terms of the Credit Agreement. Total principal of \$122,214,177.80 has been advanced out of a total commitment of \$124,591,254;
2. Upon receipt of the \$65,000,000 interim completion from CMH and payment of such amount to the Lenders, an additional \$45,051,514 becomes available under the Credit

Facility pursuant and subject to the terms of the Credit Agreement, with the Credit Facility designed to revolve back up to \$104,642,768 in accordance with the Credit Agreement; and

3. The Legislative Holdback pursuant to the Construction Act, totalling \$17,475,450, becomes payable by CMH to Project Co within 45 days after substantial completion in accordance with and subject to the Construction Act and Project Agreement dated August 28, 2014. This amount is not funded through the Credit Facility.

The Credit Facility remains in place. Provided that a path forward is agreed with Zurich and the events of default under the Credit Agreement are remedied or addressed through agreement, the Lenders are willing to make funding available to Project Co pursuant to the Credit Facility in accordance with its terms.

Call on the Bond and Next Steps

We appreciate your acknowledgement of the Receiver's December 7, 2018 demand on the Bond. Given the discussions that have taken place to date with EllisDon, we understand that Zurich has selected option #3 under the Bond and is in the process of coordinating with EllisDon as a replacement construction contractor. We would like Zurich's formal written confirmation that this is the option it has chosen to pursue under the Bond. To move the discussions with EllisDon forward, we have arranged a meeting with EllisDon at our offices on Monday, December 17, 2018. It would be most useful if you and your client are able to attend that meeting and if we can discuss the path forward in advance of that meeting.

Finally, we understand that you are in the process of preparing an outline of Zurich's view of next steps. We would be pleased to discuss that with you and provide our views on that at your earliest convenience.

Yours truly,
McCarthy Tétrault LLP




Heather L. Meredith

HLM

- c. Stephen Furlan, McCarthy Tétrault LLP
Geoff Hall, McCarthy Tétrault LLP
Stanley Julien, BMO
Eden Orbach, BMO
Linc Rogers, Blake, Cassels & Graydon LLP
Kyla Mahar, Miller Thomson LLP
Rocco Sebastiano, Osler, Hoskin, and Harcourt LLP
Adrian Braganza, Zurich Insurance Company Ltd.
Stephen Ferguson, Alvarez and Marsal

TAB T

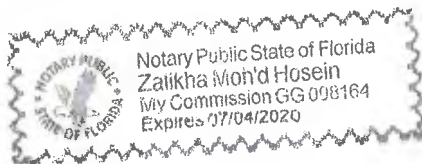
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STATE: FL

COUNTY: BROWARD



5-31-19



From: [Jennifer Stam](#)
To: "Heather Meredith"; "Geoff R. Hall"; [Furlan, Stephen](#); "Kyla E. M. Mahar"; [Bulat, Dražen](#); [Robinson, Todd](#)
Cc: [Mario Forte](#); [Brendan Bissell](#); [Sam Poteet](#)
Subject: RE: Cambridge Memorial Hospital project
Date: Friday, January 25, 2019 5:52:01 PM
Attachments: [image001.jpg](#)
[Order - Cambridge Completion and other matters - v3.doc](#)
[Cambridge Mitigation Funding Agreement GSNH draft v.5.docx](#)
[Committment Letter \(Cambridge\) v.1.docx](#)



Further to Brendan's email below, attached for your review are the following draft agreements:

1. Mitigation Funding Agreement
2. Commitment Letter for interim funding
3. Draft approval and funding order

Please note that these documents continue to be reviewed internally and by Zurich and therefore remain subject to further comments and change.

JENNIFER STAM

	Suite 1600 480 University Avenue Toronto ON M5G 1V2 Direct 416 597 5017 Fax 416 597 3370 stam@gsnh.com www.gsnh.com Assistant Karen Jones 416 597 9922 ext. 101 jones@gsnh.com
	Proud member of <div style="border: 1px solid black; height: 20px; width: 100%; position: relative;"> <div style="position: absolute; right: 5px; top: 5px;">  </div> </div>

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From: Brendan Bissell <bissell@gsnh.com>
Sent: January 25, 2019 4:51 PM
To: 'Heather Meredith' <hmeredith@mccarthy.ca>; 'Geoff R. Hall' <ghall@mccarthy.ca>; Furlan, Stephen <SFURLAN@MCCARTHY.CA>; 'Kyla E. M. Mahar' <kmahar@millerthomson.com>; Bulat, Dražen <dbulat@millerthomson.com>; Robinson, Todd <trobinson@casselsbrock.com>
Cc: Mario Forte <forte@gsnh.com>; Jennifer Stam <stam@gsnh.com>
Subject: Cambridge Memorial Hospital project

Counsel: Please note that we have received instructions to circulate drafts of two agreements and an order to implement the arrangements previously discussed (once we make a few changes to the existing drafts). We anticipate having them to you shortly, and before Monday.

If I have left anyone off this email, please forward to them or add them in a reply.

Regards,

R. Brendan Bissell
 GSNH_CMYK_w_tag



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

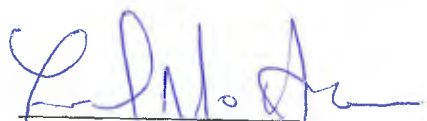
Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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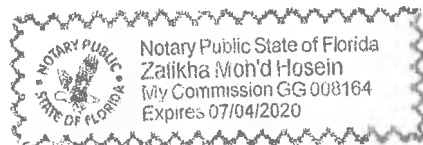
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Affidavit of Adrian Braganza
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5-31-19



dedicated to your success

R. BRENDAN BISSELL
Direct Dial 416-597-6489
Email bissell@gsnh.com
Our File No.: 100989.0001

March 5, 2019

DELIVERED BY EMAIL

Heather Meredith
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Ms. Meredith:

RE: Cambridge Memorial Hospital Redevelopment Project (the "Project")

As you know, we act for Zurich Insurance Company Ltd. ("**Zurich**").

A call has been made by 2423402 Ontario Inc. under Performance Bond No. 6342957 (the "**Bond**") issued by Zurich in respect of the contract entered into between that company and Bondfield Construction Company Limited ("**Bondfield**").

Discussions have been ongoing for some time regarding the terms under which, among others, Zurich and the bank syndicate for which Bank of Montreal is administrative agent might agree to complete the Project.

While those discussions have been going on, Zurich has been spending funds as if the call on the Bond is in force and as if acceptable arrangements for completion of the Project have been agreed upon. As of today's date, the amounts spent by Zurich, including amounts paid by Bondfield and funded by Zurich, exceed \$18.1 million.

There are amounts that are currently owing to Bondfield in respect of its work on the Project, which we are advised amount to \$2.5 million on account of the base contract, inclusive of the progress billing to January 31, 2019, but exclusive of extra work. These amounts have not been paid notwithstanding that all liens that would otherwise have prevented further advances have been removed. Zurich's expenditures under the Bond would be offset by those amounts in the ordinary course.

While we recognize that all parties seem to be attempting to move forward in good faith, the effect of this state of affairs is that Zurich is spending funds before having an agreement in place and without getting the benefit of the amounts that should already have been paid to Bondfield in order to reduce its obligations. In our view, it is unfair that Zurich be put in that position.

We note that the amounts already owing to Bondfield are a subset of a larger issue, which is that Zurich's obligations under the Bond are premised on the Balance of the Construction Contract Price being made available to Zurich. This has not taken place, but nonetheless Zurich has incurred significant expense as if the Bond had been validly called.

We accordingly ask that, consistent with Zurich's good faith funding of the Project before final arrangements have been agreed upon, Bank of Montreal and its associated syndicate members pay the funds attributable to the approved amounts on account of the base amount of the contract.

We would like to make arrangements to have the above-noted amounts brought current as soon as possible.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:



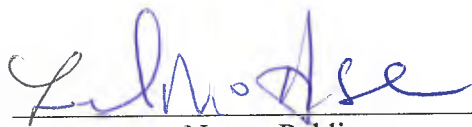
R. Brendan Bissell

RBB:ac

c.c. Kyla Mahar, *Miller Thomson*
David Ward, *Cassels Brock*
Adrian Braganza, *Zurich*
Sam Poteet, *Manier & Herod*
Mario Forte
Jennifer Stam

TAB V

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Affidavit of Adrian Braganza
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COUNTY: BROWARD



5-31-19

From: [Troke, Morgan](#)
To: [Meredith, Heather L.](#); [Brendan Bissell](#)
Cc: [Mario Forte](#); [Furlan, Stephen](#)
Subject: RE: CMH - Mitigation Funding Agreement - Without Prejudice
Date: Thursday, March 7, 2019 3:38:05 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)

Hi Brendan,

The other thing I wanted to mention (but didn't in my cover note to the broader group), is that a number of the changes that show up in the blackline are ones that we received from HGH's counsel on the Mitigation Agreement being developed in parallel, which we thought made sense to incorporate into this CHM agreement. We'll be circulating the HGH agreement to you this afternoon, so you'll see these provisions in that agreement as well.

Morgan

From: Meredith, Heather L.
Sent: Thursday, March 07, 2019 12:25 PM
To: 'Brendan Bissell'
Cc: Mario Forte; Furlan, Stephen; Troke, Morgan
Subject: CMH - Mitigation Funding Agreement - Without Prejudice

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Heather Meredith**

Partner | Associée

Bankruptcy and Restructuring | Faillite et restructuration

T: 416-601-8342

C: 416-725-4453

F: 416-868-0673

E: hmeredith@mccarthy.ca**McCarthy Tétrault LLP**

Suite 5300

TD Bank Tower

Box 48, 66 Wellington Street West

Toronto ON M5K 1E6

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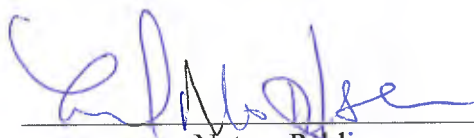
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STATE: FL

COUNTY: BROWARD



5-31-19

From: [Brendan Bissell](#)
To: [Meredith, Heather L.](#)
Cc: [Mario Forte](#); [Troke, Morgan](#); [Furlan, Stephen](#)
Subject: RE: CMH "Gap"
Attachments: [image005.png](#)
[image006.png](#)

Thanks for the details, Heather. Until I can get this reviewed and commented upon by the appropriate people on our side, I won't be able to say whether this addresses the gap in payments issue or not. If there is something different to consider, we will of course bring it to your attention.

Regards,
 Brendan

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: Meredith, Heather L. <HMEREDITH@MCCARTHY.CA>

Sent: Friday, March 08, 2019 10:08 AM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Mario Forte <forte@gsnh.com>; Troke, Morgan <mtroke@mccarthy.ca>; Furlan, Stephen <SFURLAN@MCCARTHY.CA>

Subject: CMH "Gap"

Hi Brendan,

I am writing on the issue of the \$2.3 million that EY thought was missing from their review of the Bondfield account. I know you have been looking for someone we can speak with about this and I also told you I would send you some information about what we have found so far from our review of the numbers.

Our preliminary review shows that:

1. ProjectCo received in its account more than the Progress Payments less current holdback plus HST.
2. ProjectCo paid \$126,883,684.73 to the Bondfield account at National Bank and an additional \$2,531,692.39 (slightly more than the \$2,331,531.87 "gap" identified by EY) was directed by the Bondfield principals from the ProjectCo account to:
 - a. the Italian Canadian Savings and Credit Union in the aggregate amount of \$1,196,877.11 via cheques made out to 2304288 Ontario Inc. (April 9, 2015 - \$400,000,

- July 6, 2015 - \$200,000, August 20, 2015 - \$200,000, January 8, 2016 - \$200,000) and a cheque made out to Bondfield Construction (August 17, 2017 - \$196,877.11); and
- b. Bondfield accounts 0002-1791-147 and 0002-1791-163 at BMO via transfers in the aggregate amount of \$1,334,815.28 (\$617,000 on February 6, 2018, \$117,815.28 on February 14, 2018 and \$600,000 on April 25, 2018).

We trust this addresses the issue of an alleged gap but if your client continues to have questions, please let us know.

Best,

Heather



Heather Meredith

Partner | Associée

Bankruptcy and Restructuring | Faillite et restructuration

T: 416-601-8342

C: 416-725-4453

F: 416-868-0673

E: hmeredith@mccarthy.ca

McCarthy Tétrault LLP

Suite 5300

TD Bank Tower

Box 48, 66 Wellington Street West

Toronto ON M5K 1E6

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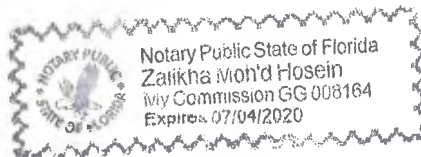
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Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

From: [Meredith, Heather L.](#)
To: [Brendan Bissell](#)
Cc: [Mario Forte](#)
Subject: Re: CMH
Date: Tuesday, March 19, 2019 7:56:35 AM

Hmm I don't know whether to say I'm sorry your flight is cancelled or feel jealous you've got an extra vacation day. I hope it is the latter - but also hope you don't get delayed further as that sounds frustrating. Safe travels today.

Quick question: Are you two planning to go to a meeting IO is convening on Wednesday morning? I think your client is supposed to be there but I suggested to Rob that we check with you two to confirm you are coming and get your views. Let me know?

Thanks,

Heather

Sent from my iPhone

On Mar 18, 2019, at 7:27 PM, Brendan Bissell <bissell@gsnh.com<<mailto:bissell@gsnh.com>>> wrote:

Hi Heather: Trip was (is) good but flight today has been cancelled to tomorrow so won't be back in the office until Wednesday. We are speaking with Zurich that afternoon so hope to have instructions shortly for further discussion with you.

Regards,
 Brendan

R. Brendan Bissell
 Office: (416) 597-6489<tel:(416)%20597-6489> | Mobile: (416) 992-4979<tel:(416)%20992-4979>
 Sent from my iPhone

On Mar 18, 2019, at 5:01 PM, Meredith, Heather L. <HMEREDITH@mccarthy.ca<<mailto:HMEREDITH@mccarthy.ca>>> wrote:

Hi Brendan,

I hope you had a great trip. Do you have a few minutes to discuss CMH tomorrow? Let me know what works best.

Thanks,

Heather

<image001.png>

Heather Meredith

Partner | Associée

Bankruptcy and Restructuring | Faillite et restructuration

T: 416-601-8342

C: 416-725-4453

F: 416-868-0673

E: hmeredith@mccarthy.ca<<mailto:hmeredith@mccarthy.ca>>

McCarthy Tétrault LLP

Suite 5300

TD Bank Tower

Box 48, 66 Wellington Street West

Toronto ON M5K 1E6

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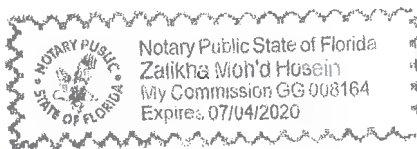
TAB Y

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5-31-19

McCarthy Tétrault LLP
 PO Box 48, Suite 5300
 Toronto-Dominion Bank Tower
 Toronto ON M5K 1E6
 Canada
 Tel: 416-362-1812
 Fax: 416-868-0673

**mccarthy
tétrault**

Heather L. Meredith
 Partner
 Direct Line: (416) 601-8342
 Direct Fax: (416) 868-0673
 Email: hmeredith@mccarthy.ca

Assistant: Fick, Kaitlin
Direct Line: (416) 601-8200 x542050
Email: klick@mccarthy.ca

March 19, 2019

Via Email (bissell@gsnh.com)

Mr. Brendan Bissell
 Partner
 Goldman, Sloan, Nash & Haber LLP
 480 University Avenue
 Suite 1600
 Toronto ON M5G 1V2

Dear Mr. Bissell

Re: Performance Bond No. 6342957 dated August 28, 2014 between Bondfield Construction Company Limited ("Bondfield") and Zurich Insurance Company Ltd. ("Zurich"), together with the Multiple Obligee Rider thereto naming Cambridge Memorial Hospital ("CMH") and Bank of Montreal (the "Agent") as Additional Named Obligees (collectively the "Performance Bond")

And Re: Credit Agreement dated as of August 28, 2014, between 2423402 Ontario Inc. (the "Borrower"), the Agent, and certain lenders (the "Lenders"), as such Credit Agreement is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Credit Agreement")

We write in respect of your letter dated March 5, 2019 and the request therein for the Lenders to advance amounts to Project Co on an interim basis.

As you know, the Credit Agreement is currently in default and the Lenders issued a payment demand to Project Co and appointed a receiver. Notwithstanding the removal of construction liens, there continue to be defaults that have not been cured under the Credit Agreement and Project Co continues to be in default. We note that there are also additional defaults under the Project Agreement (and therefore the Construction Contract) referred to in the letter from Cambridge Memorial Hospital to Project Co dated August 13, 2018 that have not been cured.

We have been in discussions with you to seek a resolution that will see the credit facility restored and funding under the Credit Agreement resume. At your request, we have been negotiating a form of Mitigation Funding Agreement, which we had understood as being your desired way to document the resumption of funds flow. We provided a revised draft Mitigation Funding Agreement to you and suggest that your client focus on providing comments on that agreement and working towards a resolution if it wishes to see funds flowing from the Lenders.

In that regard, we note that, while Zurich appears to have incurred costs in relation to the CMH project to date:

- (a) Zurich has still not agreed to fulfil its obligations under the Performance Bond as it was required to do (expeditiously) after a call on the Performance Bond;
- (b) it is our understanding that there remains less than \$1.2 million of work to be performed under the Construction Contract to achieve Interim Completion. This is the only amount that would have been payable under the original contract with Bondfield prior to Interim Completion; all other amounts necessary to achieve Interim Completion are the responsibility of Zurich pursuant to the Performance Bond; and
- (c) in your letter you reference that Zurich says it has expended \$18.1 million in relation to the CMH project. We are extremely surprised by this figure given the limited progress made on the project to date and that Interim Completion has yet to be achieved. We would appreciate if you would provide further details to support this figure. In particular, we would be interested in a breakdown in amounts spent under the performance bond, the L&M bond and the demand bond as presumably the \$18.1 million amount you reference is an aggregate spend under all three bonds.

We look forward to your feedback on the Mitigation Funding Agreement.

Yours truly,



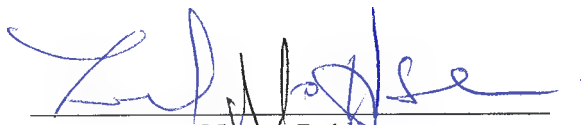
Heather L. Meredith

HLM/kf

- c. Steve Furlan, McCarthy Tétrault LLP
Geoff Hall, McCarthy Tétrault LLP

TAB *Z*

This is **Exhibit "Z"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

From: [Meredith, Heather L.](#)
To: [Mario Forte](#); [Brendan Bissell](#); [Jennifer Stam](#); "[Kyla Mahar \(kmahar@millerthomson.com\)](#)"; "[Bulat, Dražen](#)"; [malter@casselsbrock.com](#); "[David Ward \(dward@casselsbrock.com\)](#)"; [Robert.Pattison@infrastructureontario.ca](#)
Cc: [Furlan, Stephen](#); [Hall, Geoff R.](#); [Troke, Morgan](#)
Subject: RE: Cambridge - Mitigation Funding Agreement
Date: Wednesday, March 20, 2019 1:33:13 PM
Attachments: [image001.png](#)
[image002.png](#)

All,

We understand that each of you continues to be in the process of reviewing the draft Mitigation Funding Agreement that we provided to you on March 7th. We also understand a meeting has been scheduled by Infrastructure Ontario for March 27, 2019. In our view, that meeting will only be productive if we have received comments from each of you on the draft Mitigation Funding Agreement. We would appreciate receiving comments from you prior to that date and are available to discuss if there are any issues or questions that can be resolved in advance.

We are looking forward to continuing to work together to resolve this matter.

Sincerely,



Heather Meredith
 Partner | Associée
 Bankruptcy and Restructuring | Faillite et restructuration
 T: 416-601-8342
 C: 416-725-4453
 F: 416-868-0673
 E: hmeredith@mccarthy.ca

McCarthy Tétrault LLP
 Suite 5300
 TD Bank Tower
 Box 48, 66 Wellington Street West
 Toronto ON M5K 1E6

Please, think of the environment before printing this message.



From: Troke, Morgan
Sent: Thursday, March 07, 2019 3:35 PM
To: Brendan Bissell
Cc: Mario Forte; [stam@gsnh.com](#); "[Kyla Mahar \(kmahar@millerthomson.com\)](#)"; "[Bulat, Dražen](#)"; "[Todd Robinson \(trobinson@casselsbrock.com\)](#)"; [malter@casselsbrock.com](#); "[David Ward \(dward@casselsbrock.com\)](#)"; [Robert.Pattison@infrastructureontario.ca](#); [Furlan, Stephen](#); [Meredith, Heather L.](#); [Hall, Geoff R.](#)
Subject: RE: Cambridge - Mitigation Funding Agreement

[Brendan,](#)

Further to the discussion with us last week, please see attached for a revised draft of the Mitigation Funding Agreement. As with the previous version, this remains entirely subject to review and comment by the Lenders, and is also again being circulated concurrently to CMH's counsel (and so this version has not yet been discussed with them).

We look forward to discussing with you again once you have had an opportunity to review.

Morgan



Morgan Troke

Partner | Associé

Business Law

T: 604-643-7974

F: 604-622-5750

E: mtroke@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400

745 Thurlow Street

Vancouver BC V6E 0C5

From: Troke, Morgan

Sent: Tuesday, February 26, 2019 10:37 AM

To: 'Brendan Bissell'

Cc: Mario Forte; 'stam@gsnh.com'; 'Kyla Mahar (kmahar@millerthomson.com)'; 'Bulat, Dražen'; 'Todd Robinson (trobinson@casselsbrock.com)'; 'malter@casselsbrock.com'; 'David Ward (dward@casselsbrock.com)'; 'Robert.Pattison@infrastructureontario.ca'; Furlan, Stephen; Meredith, Heather L.; Hall, Geoff R.

Subject: Cambridge - Mitigation Funding Agreement

Brendan,

Further to your discussion with Heather today, please see attached for the draft Mitigation Funding Agreement with our revisions. Please note that this remains entirely subject to review and comment by the Lenders, and this version is also being circulated concurrently to CMH's counsel (cc'd here), and so remains subject to their review and comment as well.

We look forward to discussing with you once you have had a chance to review.

Morgan



Morgan Troke

Partner | Associé

Business Law

T: 604-643-7974

F: 604-622-5750

E: mtroke@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400

745 Thurlow Street

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TAB AA

This is **Exhibit "AA"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19



R. BRENDAN BISSELL
 Direct Dial 416-597-6489
 Email bissell@gsnh.com
 Our File No.: 100989.0001

March 27, 2019

DELIVERED BY EMAIL

Heather Meredith
 McCarthy Tétrault LLP
 Box 48, Suite 5300
 Toronto Dominion Bank Tower
 Toronto, ON M5K 1E6

RE: Cambridge Memorial Hospital Redevelopment Project

The March 7 draft of the Mitigation Funding Agreement that was provided was extensively revised from the form that we provided on behalf of Zurich on January 25. In the interests of attempting to narrow the issues under discussion, we have attempted to work within those revisions where possible and are preparing a set of comments with Zurich to send.

There remain, however, several points of concern and which must be addressed in order to finalize this agreement.

Most significant among them is what in our view amounts to an attempt by the Lenders to achieve a substantive benefit in respect of their claims under the Performance Bond for more than “sticks and bricks”. To that end, the Lenders in the March 7 draft sought to deduct the same amounts that will be so claimed against the Balance on the Construction Contract Price that is supposed to be devoted to completing the Project under the Performance Bond. To be clear, in order for Zurich to respond to a default by Bondfield, the entire Balance of Contract Price, which is described in the Performance Bond as being “the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligees to the Principle under the Construction Contract”, needs to be made available to complete the project.

The entire premise of the draft Agreement has been to establish a commercially reasonable way to complete this Project within this particular P3 set of circumstances but without altering the substantive rights of the parties. Reducing the Balance of Contract Price for any reason is inappropriate.

There are also questions that arose out of the March 7 draft about the obligation of the Lenders to fund under the Credit Agreement and to fund for any inability by ProjectCo to pay the Balance of the Construction Contract Price.

On the former point, the Lenders had previously advised that, subject to this Agreement, the remaining amounts available under the Credit Agreement will be advanced notwithstanding the existing defaults, so we will revise the draft to make that clear.

On the latter point, the Lenders had previously advised that they would prefer to fund any gap in ProjectCo's ability to pay the Balance of the Construction Contract Price rather than have Zurich do so as we had previously proposed. We will again revise the draft to make that obligation explicit. If, however, the Lenders are not prepared to so commit, then the provisions previously proposed by Zurich on that issue should be reinserted.

The Agreement is expressly without prejudice to the positions of the parties for any discussions or adjudication that will logically follow after completion of the Project, so there cannot be any equivocation on the funding obligations that are being undertaken in this Agreement to get the Project completed. Any interruption on payment will only increase costs and delay to the detriment of all parties.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:



R. Brendan Bissell

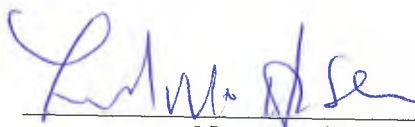
RBB:kj

Encl.

c.c. Kyla Mahar, *Miller Thomson*
David Ward, *Cassels Brock*
Adrian Braganza, *Zurich*
Sam Poteet, *Manier & Herod*
Mario Forte
Jennifer Stam

TAB BB

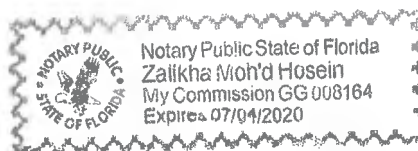
This is **Exhibit "BB"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

County: BROWARD



5-31-19

From: [Brendan Bissell](#)
To: [Troke, Morgan](#); [Melia, John](#); [Shaban, Richard H.](#); [Takagi, Kara](#); malter@casselsbrock.com; ["David Ward \(dward@casselsbrock.com\)"](mailto:dward@casselsbrock.com); Robert.Pattison@infrastructureontario.ca; [Furlan, Stephen](#); [Meredith, Heather L.](#); [Hall, Geoff R.](#)
Cc: [Adrian Braganza](#); [Sam Poteet](#); [Mario Forte](#); [Jennifer Stam](#)
Subject: RE: HGH - Draft Mitigation Agreement
Attachments: [image004.jpg](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)
[GSNH draft HGH mitigation funding agreement April 1 4pm.docx](#)
[COMPARISON - DOCS-#18842371-v8-HGH - McCarthy Mitigation Agreement - GSNH draft HGH mitigation funding agreement April 1 4pm.pdf](#)

Enclosed please find our comments on this draft agreement as well as a blackline against the previous draft circulated below.

Although the issues in the document have been discussed with Zurich and its surety counsel, Sam Poteet, as with the McCarthy Tetrault draft below please note that this remains subject to review and comment by the Zurich.

Regards,

R. Brendan Bissell

GSNH_CMYK_w_tag



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: Troke, Morgan <mtroke@mccarthy.ca>

Sent: Thursday, March 07, 2019 5:07 PM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Mario Forte <forte@gsnh.com>; Jennifer Stam <stam@gsnh.com>; Melia, John <JMelia@blg.com>; Shaban, Richard H. <RSHABAN@blg.com>; Takagi, Kara <KTakagi@blg.com>; 'Todd Robinson (trobenson@casselsbrock.com)' <trobenson@casselsbrock.com>; malter@casselsbrock.com; 'David Ward (dward@casselsbrock.com)' <dward@casselsbrock.com>; Robert.Pattison@infrastructureontario.ca; [Furlan, Stephen <SFURLAN@MCCARTHY.CA>](mailto:Furlan,Stephen@MCCARTHY.CA); Meredith, Heather L. <HMEREDITH@MCCARTHY.CA>; [Hall, Geoff R. <GHALL@MCCARTHY.CA>](mailto:GHALL@MCCARTHY.CA)

Subject: HGH - Draft Mitigation Agreement

Brendan,

Please see attached for a draft of the Mitigation Agreement for Hawkesbury. Please note that this remains entirely subject to review and comment by the Lenders. Also, while this does reflect comments received from HGH's counsel following direct counsel to counsel discussions we had with

them, it remains subject to their (and their client's and IO's) ongoing review and comment.

We look forward to discussing with you once you have had an opportunity to review.

Morgan



Morgan Troke

Partner | Associé

Business Law

T: 604-643-7974

F: 604-622-5750

E: mtroke@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400

745 Thurlow Street

Vancouver BC V6E 0C5



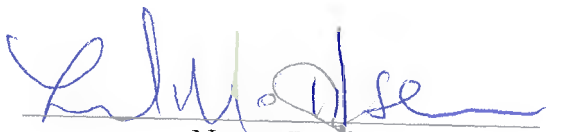
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TAB CC

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sworn before me this 31st day of May, 2019


Notary Public

STATE : FL
COUNTY : BROWARD



5-31-19



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Heather L. Meredith
Partner
Direct Line: (416) 601-8342
Direct Fax: (416) 868-0673
Email: hmeredith@mccarthy.ca

Assistant: Fick, Kaitlin
Direct Line: (416) 601-8200 x542050
Email: klick@mccarthy.ca

April 4, 2019

WITH PREJUDICE

Via Email (bissell@gsnh.com)

Mr. Brendan Bissell
Partner
Goldman, Sloan, Nash & Haber LLP
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

Dear Mr. Bissell

Re: Performance Bond No. 6342957 dated August 28, 2014 between Bondfield Construction Company Limited ("Bondfield") and Zurich Insurance Company Ltd. ("Zurich"), together with the Multiple Obligee Rider thereto naming Cambridge Memorial Hospital ("CMH") and Bank of Montreal (the "Agent") as Additional Named Obligees (collectively the "Performance Bond")

And Re: Credit Agreement dated as of August 28, 2014, between 2423402 Ontario Inc. (the "Borrower"), the Agent, and certain lenders (the "Lenders"), as such Credit Agreement is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Credit Agreement")

We write in respect of your letter dated March 27, 2019. We disagree with your characterization therein and are unclear why a with prejudice letter was sent attempting to characterize, in a manner unduly favourable to Zurich, ongoing without prejudice discussions in which we have been participating. Contrary to the assertions in your letter:

1. The Lenders are not attempting to achieve a substantive benefit in relation to the "sticks and bricks" argument. As held by the Ontario Court of Appeal, the obligations of Zurich under the Performance Bond are not limited to "sticks and bricks."¹ The Lenders proposed simply to hold Zurich to its obligations under the Performance Bond, with which it has, so far, been unwilling to comply in exchange for a concession from the Lenders with respect to the escrow funds.

¹ *Whitby Landmark Developments Inc. v. Mollenhauer Construction Ltd.*, 2003 CarswellOnt 3968 (SCJ).

2. With respect to the statement in your letter 'to be clear' about the Balance of the Construction Contract Price, we note that the Lenders have been equally clear that they dispute Zurich's calculation of that amount. In the Lenders' view, Zurich is demanding more than receipt of the "Balance of the Construction Contract Price as defined in the Performance Bond", it is instead asking to have a specific amount paid by it that exceeds the Balance of the Construction Contract Price as calculated by the Lenders. Zurich's calculation relies on a tenuous argument that, notwithstanding the existing defaults, it should be able to receive more than the Construction Contractor would have received under the Construction Contract simply based on an argument relating to the timing of payment under the Project Agreement.
3. The Lenders are committed to finding a commercially reasonable way to complete the project. However, Zurich has been attempting to alter the substantive rights of the parties, including by seeking to have the Lenders agree to fund amounts that they never committed to fund.
4. With respect to funding of any "gap", we continue to await a substantive response from Zurich to the Lenders' figures that show that there is no anticipated gap. Moreover, when you refer to Zurich's previous proposal to fund a "gap", it is important to note that Zurich's proposal sought to obtain a priority charge for such funding. In a closed system where there appears to be a shortfall, this would ultimately produce a shortfall for the Lenders so was not a realistic option.
5. The Lenders provided their revised draft Mitigation Funding Agreement on March 7, 2019, nearly one month ago. The draft was revised in a manner to seek to address the various issues between our clients. In your letter you indicated that you were still preparing comments on that draft. Please let us know when we can expect to see those comments. We agree that continued delay and the resulting costs to the parties should be avoided and, therefore, look forward to hearing from you promptly.

Yours truly,



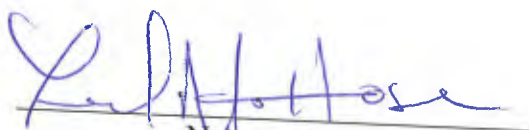
Heather L. Meredith

HLM/kf

- c. Steve Furlan, McCarthy Tétrault LLP
Geoff Hall, McCarthy Tétrault LLP

TAB DD

This is **Exhibit "DD"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019


Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

From: [Troke, Morgan](#)
To: [Brendan Bissell](#)
Cc: [Adrian Braganza](#); [Sam Poteet](#); [Mario Forte](#); [Jennifer Stam](#); [Melia, John](#); [Shaban, Richard H.](#); [Takagi, Kara](#); [malter@casselsbrock.com](#); ["David Ward \(dward@casselsbrock.com\)"](#); [Robert.Pattison@infrastructureontario.ca](#); [Furlan, Stephen](#); [Meredith, Heather L.](#); [Hall, Geoff R.](#)
Subject: RE: HGH - Draft Mitigation Agreement
Date: Thursday, April 11, 2019 2:02:15 PM
Attachments: [image001.png](#)
[image003.png](#)
[DOCS-#18842371-v10-HGH - Mitigation Agreement.docx](#)
[DOCS-#18842371-vpdf-HGH - Mitigation Agreement.pdf](#)

Brendan,

Further to the meeting between TD and Zurich last week, please see attached for comments on behalf of the Lenders on the HGH Mitigation Agreement. Please note that this continues to remain entirely subject to ongoing review and comment by the Lenders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We look forward to discussing with you once you have had an opportunity to review.

Morgan



Morgan Troke
 Partner | Associé
 Business Law
 T: 604-643-7974
 F: 604-622-5750
 E: mtroke@mccarthy.ca

McCarthy Tétrault LLP
 Suite 2400
 745 Thurlow Street
 Vancouver BC V6E 0C5

From: Brendan Bissell [<mailto:bissell@gsnh.com>]
Sent: Monday, April 01, 2019 2:48 PM
To: Troke, Morgan; Melia, John; Shaban, Richard H.; Takagi, Kara; [malter@casselsbrock.com](#); 'David Ward (dward@casselsbrock.com)'; [Robert.Pattison@infrastructureontario.ca](#); Furlan, Stephen; Meredith, Heather L.; Hall, Geoff R.
Cc: Adrian Braganza; Sam Poteet; Mario Forte; Jennifer Stam
Subject: RE: HGH - Draft Mitigation Agreement

Enclosed please find our comments on this draft agreement as well as a blackline against the previous draft circulated below.

Although the issues in the document have been discussed with Zurich and its surety counsel, Sam Poteet, as with the McCarthy Tétrault draft below please note that this remains subject to review and

comment by the Zurich.

Regards,

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: Troke, Morgan <mtroke@mccarthy.ca>

Sent: Thursday, March 07, 2019 5:07 PM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Mario Forte <forte@gsnh.com>; Jennifer Stam <stam@gsnh.com>; Melia, John <JMelia@blg.com>; Shaban, Richard H. <RSHABAN@blg.com>; Takagi, Kara <KTakagi@blg.com>; 'Todd Robinson (trobinson@casselsbrock.com)' <trobinson@casselsbrock.com>; malter@casselsbrock.com; 'David Ward (dward@casselsbrock.com)' <dward@casselsbrock.com>; Robert.Pattison@infrastructureontario.ca; Furlan, Stephen <SFURLAN@MCCARTHY.CA>; Meredith, Heather L. <HMEREDITH@MCCARTHY.CA>; Hall, Geoff R. <GHALL@MCCARTHY.CA>

Subject: HGH - Draft Mitigation Agreement

Brendan,

Please see attached for a draft of the Mitigation Agreement for Hawkesbury. Please note that this remains entirely subject to review and comment by the Lenders. Also, while this does reflect comments received from HGH's counsel following direct counsel to counsel discussions we had with them, it remains subject to their (and their client's and IO's) ongoing review and comment.

We look forward to discussing with you once you have had an opportunity to review.

Morgan



Morgan Troke

Partner | Associé

Business Law

T: 604-643-7974

F: 604-622-5750

E: mtroke@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400

745 Thurlow Street

Vancouver BC V6E 0C5




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TABLE

This is **Exhibit "EE"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
County: BROWARD



5-31-19

From: [Troke, Morgan](#)
To: [Robinson, Odette](#); [McNally, Denise \(IO\)](#); [Polny, Danny \(IO\)](#); [Pattison, Robert](#); [von dem Hagen, Agnes](#); [Traianopoulos, John](#); [Killer, Chris \(IO\)](#); pgaskin@cmh.org; [Adrian Braganza](#); [Mike Prociw](#); [Mahar, Kyla](#); [Paul Bordieri](#); [Brendan Bissell](#); [Mario Forte](#); [Bulat, Dražen](#); [Jennifer Stam](#); [Currie, Carolyn \(IO\)](#); [Ward, David](#); [Alter, Matthew](#); [Sebastiano, Rocco](#)
Cc: [Julien, Stanley](#); [Sutherland, Murray](#); [ORBACH, EDEN](#); [Meredith, Heather L.](#); [Furlan, Stephen](#)
Subject: Cambridge Memorial Hospital - Meeting with IO, Cambridge, BMO and Zurich
Date: Thursday, April 11, 2019 10:54:17 PM
Attachments: [image001.png](#)
[DOCS-#18819247-v5-Cambridge Mitigation Funding Agreement \(McCarthy Comme....docx](#)
[DOCS-#18819247-vpdf-Cambridge Mitigation Funding Agreement \(McCarthy Com.....pdf](#)

All,

We write further to the in-person meeting held between Cambridge Memorial Hospital, Zurich, Infrastructure Ontario and Bank of Montreal, and their respective counsels, on March 27, 2019, and in advance of the subsequent meeting between those parties scheduled to be held this Monday, April 15, 2019.

It has been over two weeks since the last meeting, and the Lenders have not yet received comments from Zurich on the draft Mitigation Funding Agreement circulated on March 7, 2019, nor have they received the figure for “Estimated CMH Losses” that we understand CMH and IO were preparing. In an effort to move the discussions forward, we have taken the initiative to revise the draft Mitigation Funding Agreement to reflect comments and discussions on a separate project, and attach a copy of that draft along with a blackline to our prior March 7, 2019 draft. Please note that this continues to remain entirely subject to ongoing review and comment by the Lenders, and will also still require review by the Receiver.

We remain available to meet as planned on Monday, however given that the Lenders have not received any information or documentation from the other parties since the last meeting, proceeding with the meeting on Monday would not appear to be useful and, instead, we propose the parties review the attached draft and provide comments and the requested information as soon as possible so that this matter can move forward.



Morgan Troke
 Partner | Associé
 Business Law
 T: 604-643-7974
 F: 604-622-5750
 E: mtroke@mccarthy.ca

McCarthy Tétrault LLP
 Suite 2400
 745 Thurlow Street
 Vancouver BC V6E 0C5

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Suite 5300, TD Bank Tower, Box 48, 66 Wellington Street West, Toronto, ON M5K 1E6

TAB FF

This is **Exhibit "FF"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

From: [Brendan Bissell](#)
To: [Troke, Morgan](#); [Robinson, Odette](#); [McNally, Denise \(IO\)](#); [Polny, Danny \(IO\)](#); [Pattison, Robert](#); [von dem Hagen, Agnes](#); [Traianopoulos, John](#); [Killer, Chris \(IO\)](#); pgaskin@cmh.org; [Adrian Braganza](#); [Mike Prociw](#); [Mahar, Kyla](#); [Paul Bordieri](#); [Mario Forte](#); [Bulat, Dražen](#); [Jennifer Stam](#); [Currie, Carolyn \(IO\)](#); [Ward, David](#); [Alter, Matthew](#); [Sebastiano, Rocco](#)
Cc: [Julien, Stanley](#); [Sutherland, Murray](#); [ORBACH, EDEN](#); [Meredith, Heather L.](#); [Furlan, Stephen](#)
Subject: RE: Cambridge Memorial Hospital - Meeting with IO, Cambridge, BMO and Zurich
Attachments: [image003.png](#)

Zurich agrees with Bank of Montreal that:

- a. the revisions below are in light of what have been productive comments and discussions on a separate project, and
- b. it would be a more productive use of the parties' time to assemble detailed comments on this set of revisions rather than to meet on Monday.

On that basis, Zurich suggests that Monday's meeting be postponed and that people focus on (b) forthwith instead.

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: Troke, Morgan <mtroke@mccarthy.ca>

Sent: Thursday, April 11, 2019 10:54 PM

To: Robinson, Odette <Odette.Robinson@infrastructureontario.ca>; McNally, Denise (IO) <Denise.McNally@infrastructureontario.ca>; Polny, Danny (IO) <Danny.Polny@infrastructureontario.ca>; Pattison, Robert <Robert.Pattison@infrastructureontario.ca>; von dem Hagen, Agnes <Agnes.vondemHagen@infrastructureontario.ca>; Traianopoulos, John <John.Traianopoulos@infrastructureontario.ca>; Killer, Chris (IO) <Chris.Killer@infrastructureontario.ca>; pgaskin@cmh.org; [Adrian Braganza](mailto:Adrian.Braganza@zurichna.com) <adrian.braganza@zurichna.com>; [Mike Prociw](mailto:Mike.Prociw@cmh.org) <mprociw@cmh.org>; [Mahar, Kyla](mailto:Mahar,Kyla@millერთhompson.com) <kmahar@millერთhompson.com>; [Paul Bordieri](mailto:PBordieri@perini.com) <PBordieri@perini.com>; [Brendan Bissell](mailto:Brendan.Bissell@gsnh.com) <bissell@gsnh.com>; [Mario Forte](mailto:Mario.Forte@gsnh.com) <forte@gsnh.com>; [Bulat, Dražen](mailto:dbulat@millერთhompson.com) <dbulat@millერთhompson.com>; [Jennifer Stam](mailto:stam@gsnh.com) <stam@gsnh.com>; [Currie, Carolyn \(IO\)](mailto:Carolyn.Currie@infrastructureontario.ca) <Carolyn.Currie@infrastructureontario.ca>; [Ward, David](mailto:dward@CasselsBrock.com) <dward@CasselsBrock.com>; [Alter, Matthew](mailto:malter@casselsbrock.com) <malter@casselsbrock.com>; [Sebastiano, Rocco](mailto:RSebastiano@osler.com) <RSebastiano@osler.com>

Cc: Julien, Stanley <Stanley.Julien@bmo.com>; Sutherland, Murray <Murray.Sutherland@bmo.com>; ORBACH, EDEN <EDEN.ORBACH@bmo.com>; Meredith, Heather

L. <HMEREDITH@MCCARTHY.CA>; Furlan, Stephen <SFURLAN@MCCARTHY.CA>

Subject: Cambridge Memorial Hospital - Meeting with IO, Cambridge, BMO and Zurich

All,

We write further to the in-person meeting held between Cambridge Memorial Hospital, Zurich, Infrastructure Ontario and Bank of Montreal, and their respective counsels, on March 27, 2019, and in advance of the subsequent meeting between those parties scheduled to be held this Monday, April 15, 2019.

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Morgan Troke

Partner | Associé

Business Law

T: 604-643-7974

F: 604-622-5750

E: mtroke@mccarthy.ca

McCarthy Tétrault LLP

Suite 2400

745 Thurlow Street

Vancouver BC V6E 0C5


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TAB GG

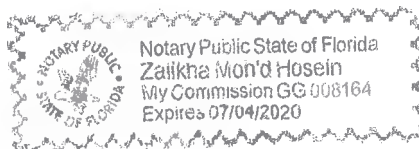
This is **Exhibit "GG"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19



dedicated to your success

R. BRENDAN BISSELL
Direct Dial 416-597-6489
Email bissell@gsnh.com
Our File No.: 100989.0001

April 26, 2019

DELIVERED BY EMAIL

Heather Meredith
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

David Ward
Cassels, Brock & Blackwell LLP
Scotia Plaza, 40 King St. W., Suite 2100
Toronto, ON M5H 3C2

Kyla Mahar
Miller Thomson LLP
Scotia Plaza, 40 King St. W., Suite 5800
Toronto, ON M5H 3S1

Dear Ms. Meredith, Mr. Ward and Ms. Mahar:

RE: Cambridge Memorial Hospital Redevelopment Project (the "Project")

As you know, we act for Zurich Insurance Company Ltd. ("Zurich").

2423402 Ontario Inc. ("Project Co") by its receiver made a claim on December 7, 2018 under Performance Bond No. 6342957 (the "Bond") issued by Zurich in respect of the contract entered into between Project Co and Bondfield Construction Company Limited ("Bondfield").

Zurich has been expending funds under a reservation of rights in order progress the work under that contract. Zurich had in fact been doing so even prior to the formal call on the bond on December 7, and has continued to do so while attempts have been underway to reach an agreement among Zurich, Project Co, the banks and the hospital about arrangements to complete the project. There have been numerous meetings, phone calls and written correspondence amongst the parties on that matter, both before and after the claim on December 7, 2018.

As of today's date, the amounts spent by Zurich, including amounts paid by Bondfield and funded by Zurich, exceed \$21.6 million.

The discussions among Zurich, the banks and the hospital about a possible agreement have been ongoing since the third week of December.

While those discussions have been taking place, no payments have been made in respect of the contract for which the Bond guarantees performance. This is despite the fact that amounts of approximately \$2.5 million are clearly owing to Bondfield under the contract with Project Co,

for which the failure to pay has compounded the financial harm to Zurich arising out of the duration of those discussions without a successful resolution.

It is Zurich's view that, despite the considerable efforts that have been made, a possible agreement among Zurich, the banks and the hospital is not feasible. The notice of motion served by the banks today only serves to illustrate that the banks are not prepared to recognize that the Bond has requirements that exist independently of the project structure and must be met. That is not a productive basis on which to proceed.

Zurich is therefore not prepared to indefinitely fund further work on this project under the Bond, even on a without prejudice basis, without an agreement in place and without the obligations under the Bond on Project Co as obligee being met.

Zurich has therefore prepared a more streamlined version of the proposed agreement solely between Zurich and Project Co, a copy of which is attached. It is Zurich's view that this form of agreement will provide the proper framework for this Project to go ahead and for a resolution of the issues that appear to have led to an impasse in the wider agreement that had been proposed.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:

A handwritten signature in dark ink, appearing to read "R. B. Bissell", with a stylized flourish at the end.

R. Brendan Bissell

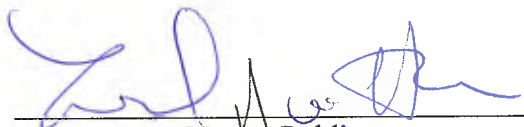
RBB:kj

Encl.

Adrian Braganza, *Zurich*
Sam Poteet, *Manier & Herod*
Mario Forte

TAB HH

This is **Exhibit "HH"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



5-31-19

From: [Pattison, Robert](#)
To: [Matthew Lerner](#); [Mahar, Kyla](#)
Cc: [Hall, Geoff R.](#); [Bulat, Dražen](#); [Meredith, Heather L.](#); [Currie, Carolyn \(IO\)](#); [Scott Rollwagen](#); [Brian Kolenda](#); [Cyr, Marc \(mcyrc@sc360.com\)](#); [Alter, Matthew](#)
Subject: Re: [**EXT**] Re: Assurance [IWOFV-LSRSGDOCS.FID508822]
Date: Saturday, May 4, 2019 2:08:08 PM
Attachments: [image003.png](#)
[image533169.PNG](#)

Infrastructure Ontario concurs with CHM.

Get [Outlook for Android](#)

From: Mahar, Kyla <kmahar@millerthomson.com>
Sent: Saturday, May 4, 2019 2:04:08 PM
To: Matthew Lerner
Cc: Hall, Geoff R.; Bulat, Dražen; Meredith, Heather L.; Pattison, Robert; Currie, Carolyn (IO); Scott Rollwagen; Brian Kolenda; Cyr, Marc (mcyrc@sc360.com); Alter, Matthew
Subject: Re: [**EXT**] Re: Assurance [IWOFV-LSRSGDOCS.FID508822]

Matt,

Thank you for confirming that Zurich will continue to fund work on the project to Interim Completion, without prejudice to its ultimate position on Zurich's obligations under applicable bonds. On this basis, CMH does not object to the timetable proposed by Geoff Hall and amended by you this week. I intend to attend the Chambers attendance on Monday.

Regards,

Kyla

KYLA MAHAR

Partner

Miller Thomson LLP

Scotia Plaza
 40 King Street West, Suite 5800
 P.O. Box 1011
 Toronto, Ontario M5H 3S1

Direct Line: +1 416.597.4303

Fax: +1 416.595.8695

Email: kmahar@millerthomson.com
millerthomson.com



Please consider the environment before printing this email.

On May 3, 2019, at 5:33 PM, Matthew Lerner <mlerner@litigate.com> wrote:

Hi Kyla:

We have reviewed your request and obtained instructions from our client.

Without prejudice to our ultimate position on Zurich's obligations under applicable bonds, our client will continue to fund work on the project to Interim Completion. These funds are being (and have been) paid for the benefit of your client as a gesture of good faith and on a full reservation of rights basis.

Pursuant to the bond, it remains our position that Project Co must pay the balance of contract funds owed, including the \$2.5 million owed to Bondfield at present.

Can you please confirm that you are now content with Geoff's timetable along with my modest revisions to it?

As mentioned I am out of the country starting this evening until the evening of May 12. I will send someone on Monday to speak to the matter, but trust it will be on the basis of a consent timetable.

Thank you Kyla,
Matt

<[image002.png](#)>

Matthew Lerner*

T 416-865-2940
F 416-865-2840
mlerner@litigate.com

130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5
www.litigate.com

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From: Mahar, Kyla [<mailto:kmahar@millerthomson.com>]

Sent: May 3, 2019 7:37 AM

To: Matthew Lerner

Cc: Hall, Geoff R.; Bulat, Dražen; Meredith, Heather L.; Pattison, Robert; Currie, Carolyn (IO); Scott Rollwagen; Brian Kolenda; Cyr, Marc (mcyr@sc360.com); Alter, Matthew

Subject: RE: **[**EXT**]** Re: Assurance

Matt and team,

Further to our call yesterday evening, the following is the assurance that we are looking for from Zurich:

The Scheduled Interim Completion Date was November 30, 2016 and the Scheduled Substantial Completion Date was March 31, 2019. The Construction Work has not yet achieved Interim Completion (29 month delay to date). While the issues raised in the lenders' motion will need to be resolved, CMH seeks assurance from Zurich that, until the issues raised in the motion are either settled or disposed of by the Court, Zurich will ensure that the Construction Work under and in accordance with the bonded contract continues; so that Interim Completion is achieved as soon as possible, and in accordance with the bonded contract, including without limitation the correction of deficient Construction Work required to achieve Interim Completion.

I look forward to hearing from you.

Thank you.

Kyla

KYLA MAHAR

Partner

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.597.4303

Fax: +1 416.595.8695

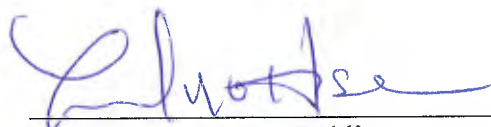
Email: kmahar@millerthomson.com

millerthomson.com



TAB II

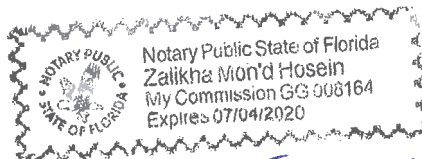
This is **Exhibit "II"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

McCarthy Tétrault LLP
 PO Box 48, Suite 5300
 Toronto-Dominion Bank Tower
 Toronto ON M5K 1E6
 Canada
 Tel: 416-362-1812
 Fax: 416-868-0673

**mccarthy
 tetrault**

Heather L. Meredith
 Partner
 Direct Line: (416) 601-8342
 Direct Fax: (416) 868-0673
 Email: hmeredith@mccarthy.ca

Assistant: *Fick, Kaitlin*
 Direct Line: (416) 601-8200 x542050
 Email: kfick@mccarthy.ca

May 6, 2019

Via Email (bissell@gsnh.com)

Mr. Brendan Bissell
 Partner
 Goldman, Sloan, Nash & Haber LLP
 480 University Avenue
 Suite 1600
 Toronto ON M5G 1V2

Dear Mr. Bissell

Re: Performance Bond No. 6342957 dated August 28, 2014 between Bondfield Construction Company Limited ("Bondfield") and Zurich Insurance Company Ltd. ("Zurich"), together with the Multiple Obligee Rider thereto naming Cambridge Memorial Hospital ("CMH") and Bank of Montreal (the "Agent") as Additional Named Obligees (collectively the "Performance Bond")

And Re: Credit Agreement dated as of August 28, 2014, between 2423402 Ontario Inc. ("Project Co"), the Agent, and certain lenders (the "Lenders"), as such Credit Agreement is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the "Credit Agreement") and Construction Contract between Bondfield and Project Co dated August 28, 2018 (the "Construction Contract")

We are counsel to the Agent and are in receipt of your letter dated April 26, 2019.

In that letter you assert that Zurich has spent amounts that exceed \$21.6 million, presumably in relation to the Cambridge Memorial Hospital Redevelopment Project (the "**Project**"). As a preliminary matter, when Zurich made similar assertions in earlier correspondence, we asked for details of such expenditures as they appear to be significantly disproportionate to the value of the work (which we understand was estimated to be \$1.2 million to interim completion). We once again request that information. Moreover, despite the alleged investment by Zurich, interim completion has still not been met and we understand from counsel to CMH that the dates set for interim completion have been missed on multiple occasions and it is expected that the latest proposed date will be missed as well.

Most significant, though, is that Zurich alleges that it is funding on a "reservation of rights" basis and that it is not prepared to do so without an agreement in place. In the view of the Agent, Zurich is obliged to advance such funds pursuant to the Performance Bond.

First, while Zurich alleges that Project Co is obliged to pay the Balance of the Construction Contract Price to Zurich (in the amount calculated by Zurich) as a condition of Zurich's funding of the Project, the reference to "Balance of the Construction Contract Price" is only contained in "option #3" of the Performance Bond and Zurich has not selected that option. Not only has Zurich refused to confirm which option it has selected but also it has not obtained a bid or bids and submitted those to Project Co as it is required to do under option #3. Rather, Zurich has continued to use Bondfield to complete construction work. This is more in line with the steps under option #1 "remedy and default" or option #2 "complete the Construction Contract in accordance with its terms and conditions". Such options do not require payment by Project Co as Zurich alleges. Rather, under such options Zurich is required to make payments of the very nature it claims it has been making.

Second, even pursuant to option #3, there is no requirement that funds be paid "up front" before Zurich is required to make a payment. Option #3 requires Zurich to make payments to complete Bondfield's obligations in accordance with the terms and conditions of the Construction Contract but simply notes that those payments are 'less the Balance of the Construction Contract Price'. Even if Zurich has made the payments it alleges in support of the Project, Zurich has not yet paid all amounts to complete Bondfield's obligations less the Balance of the Construction Contract Price.

Moreover, the Balance of the Construction Contract Price is defined in the Performance Bond as "the total amount of the Guaranteed Price payable to [Bondfield] under the Construction Contract, less the amount properly paid by [Project Co] to [Bondfield] under the Construction Contract." At this time, there is no amount properly "payable to [Bondfield] under the Construction Contract". Notwithstanding the removal of construction liens against the property, there continue to be multiple defaults that have not been waived or cured. While the Agent has been meeting with you regularly and working diligently to develop a solution that will see the remaining defaults cured or waived, until that occurs, the Credit Agreement continues to be in default and funding is not currently available to Project Co in such circumstances. Please see the attached letter to Bondfield dated May 1, 2019 clarifying that non-payment by Project Co in such circumstances does not constitute a default under the Construction Contract given the express terms thereof and the defaults by Bondfield.

In any event, even if funding was presently available under the credit facility contemplated in the Credit Agreement, it would only be in the amount of \$2,377,076.20 until interim completion is reached. Zurich's continuing refrain that it has spent significant sums on the Project belies the fact that in any circumstances it is responsible for all payments in excess of that amount to complete the work to interim completion.

Third, we have advised on a number of occasions that we are supportive of Project Co making available the "Balance of the Construction Contract Price" as defined in the Performance Bond. However, Zurich takes a different view as to how that figure is calculated, which has required the Agent to bring a motion for determination of such issues.

Finally, we received Zurich's most recent revised draft of the Mitigation Agreement in which the Lenders and CMH have been removed from the agreement and Zurich has added numerous conditions such as reserving all rights and continuing to assert that it has no liability under the Performance Bond or has been discharged of such liability. As you know, there is no provision

of the Performance Bond that requires a mitigation agreement. That is a request made by Zurich but is not a requirement of performance under the Performance Bond. While the Agent has been engaged trying to find a solution that will meet Zurich's demand for a mitigation agreement, the terms contained in the present draft (including the addition of 'full reservation of rights' language in the preamble and similar language in paragraphs 15, 18 and 19 as well as the removal of "subject to" language in paragraph 4 and addition of language at the end of that paragraph) are unworkable and inconsistent with Zurich's obligations to promptly select and perform an option under the Performance Bond.

Zurich's continued insistence on payments and documentation that are not contemplated in the Performance Bond when it has not selected an option under the Performance Bond and has not fulfilled its obligations thereunder have led to continued delays and failures to meet interim completion and is causing prejudice to the Project and the Lenders.

We remain hopeful that Zurich will be willing to live up to its obligations under the Performance Bond and the Agent is committed to finding a constructive solution. If Zurich has indeed spent the amounts set out in the April 26, 2019 letter in support of the Project, that is a helpful start in furtherance of Zurich's obligations under the Performance Bond. However, it is not appropriate to threaten to discontinue funding or that Zurich will take the position it is discharged from obligations under the Performance Bond. Such actions appear designed to force the parties to accede to Zurich's unreasonable requirements and/or to set up an argument that the Project was delayed when in fact it was Zurich's own unreasonable requirements that caused the delay. This is not a productive basis on which to negotiate. In all of the circumstances, we ask that Zurich reconsider its position in the latest Mitigation Funding agreement and, at minimum, remove the various additions seeking a broad reservation of rights and the expanded relief at the end of paragraph 4.

Yours truly,



Heather L. Meredith

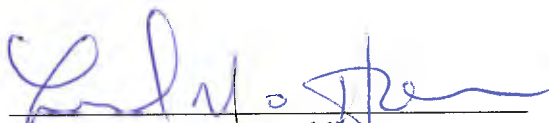
HLM/kf

Attachment [May 1, 2019 letter]

- c. E. Orbach, Bank of Montreal, as administrative agent
S. Furlan, G. Hall & M. Troke, counsel to Bank of Montreal, as administrative agent
K. Mahar and D. Bulat, counsel to Cambridge Memorial Hospital
D. Ward, counsel to Infrastructure Ontario
M. Forte, S. Poteet & M. Lerner, counsel to Zurich Insurance Company Ltd.

TAB JJ

This is **Exhibit "JJ"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL
COUNTY: BROWARD



S-31-19

Court File No. CV-19-615560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BONDFIELD CONSTRUCTION COMPANY LIMITED, 950504 ONTARIO INC., 352021
ONTARIO LIMITED, 2433485 ONTARIO INC. AND 2433486 ONTARIO INC.**

SECOND REPORT OF THE MONITOR

May 24, 2019

Court File No. CV-19-615560-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BONDFIELD CONSTRUCTION COMPANY LIMITED, 950504 ONTARIO INC., 352021
ONTARIO LIMITED, 2433485 ONTARIO INC. AND 2433486 ONTARIO INC.

SECOND REPORT OF THE MONITOR

May 24, 2019

INTRODUCTION

- 1 On March 5, 2019, Bondfield Construction Company Limited ("**BCCL**"), 352021 Ontario Limited, 950504 Ontario Inc., 2433485 Ontario Inc., and 2433486 Ontario Inc. (each an "**Applicant**", and collectively, the "**Applicants**" or the "**Bondfield Group**") filed an application (the "**CCAA Application**"), returnable on March 6, 2019, seeking an Initial Order pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs.
- 2 The principal operating entity among the Applicants is BCCL, which is a full service construction company operating throughout Ontario.
- 3 On March 6, 2019, the CCAA Application was adjourned. The Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an endorsement that, among other things, imposed an interim stay of proceedings to allow the Applicants to continue their ordinary course business operations pending further Order of the Court.
- 4 The Applicants, Zurich Insurance Company Ltd. ("**Zurich**"), as principal surety for BCCL's bonded construction projects, and Bridging Finance Inc. (the "**Agent**"), as agent

for the secured lenders to the Applicants, engaged in extensive discussions resulting in an agreement to support a CCAA Application by the Applicants dated as of March 15, 2019 (the “**CCAA Filing Agreement**”).

- 5 On April 3, 2019, the Court granted an Initial Order in these proceedings (as amended and restated, the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor (in such capacity, the “**Monitor**”), approved a continued stay of proceedings in favour of the Applicants until May 3, 2019 (the “**Stay Period**”), approved the CCAA Filing Agreement, approved interim financing facilities to be provided by Zurich (the “**Zurich DIP Facility**”) and certain lenders for which the Agent acts as agent (the “**Agent DIP Facility**”), and granted certain other orders to give effect to the CCAA Filing Agreement.
- 6 On April 30, 2019, the Court granted an Order, among other things, extending the Stay Period to June 27, 2019.
- 7 2032686 Ontario Inc. (“**BMC Masonry**”) is a company affiliated with the Applicants. John Aquino is the sole shareholder of BMC Masonry and remains its sole director. Since October of 2018, the Applicants have been paying BMC Masonry’s suppliers and employees directly. BMC Masonry has minimal assets and a limited number of creditors. Therefore, the Applicants did not include BMC Masonry in these CCAA proceedings and, instead, requested and obtained an order of the court granting a limited stay of proceedings in favour of BMC Masonry and John Aquino in his capacity as a director of BMC Masonry.
- 8 Capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order.

PURPOSE

- 9 This Second Report (the “**Second Report**”) has been prepared by the Monitor to provide information to the Court on the Monitor’s motions for orders:
 - (a) scheduling a motion, if necessary, to resolve matters relating to certain tax amounts and refunds owing to, or owing by or received from, Canada Revenue Agency (“**CRA**”);

- (b) approving the Monitor's continuation of the investigation of certain financial irregularities relating to the Applicants and others and approving a funding arrangement for that continued investigation; and
- (c) providing direction with respect to the timetable for the Finch West Litigation (as defined below) to proceed.

TERMS OF REFERENCE AND DISCLAIMER

10 In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third party sources (collectively, the "**Information**"). Except as described in this Second Report:

- (a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
- (b) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

11 Future oriented financial information referred to in this Second Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

- 12 Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Second Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.
- 13 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

UPDATE ON APPLICANTS’ OPERATIONS

- 14 The Applicants, with the assistance of Perini Management Services Inc. (advisor to Zurich) and the Monitor, continue to advance various construction projects.
- 15 Pursuant to the Initial Order, the Applicants, with the assistance of the Monitor, continue to process disbursements to subcontractors and suppliers and other parties, primarily funded by advances from Zurich pursuant to both its bonded obligations and the Zurich DIP Facility. There has been no significant disruptions in the supply of goods and services to the Applicants during the post-filing period.


TAX MATTERS

Overview

- 16 Set out below is a summary of the estimated tax arrears owing by the Applicants and certain affiliated entities and Harmonized Sales Tax (“**HST**”) refunds owing to or received by the Applicants and certain affiliated entities as at April 2, 2019 based on the Applicants’ records, which remain subject to review. As discussed further below, the Applicants and their affiliated entities remain subject to multiple ongoing audit requests from Canada Revenue Agency (“**CRA**”) with respect to pre-filing HST, source deduction and income tax matters.

TAB KK

This is **Exhibit "KK"** referred to in the
Affidavit of Adrian Braganza
sworn before me this 31st day of May, 2019



Notary Public

STATE: FL

COUNTY: BROWARD



5-31-19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Mike Prociw [mailto:MProciw@cmh.org]

Sent: Wednesday, May 29, 2019 11:12 AM

To: 'adrian.braganza@zurichna.com' <adrian.braganza@zurichna.com>; pbordieri@perini.com

Cc: Julien, Stanley <Stanley.Julien@bmo.com>; Trevor Bracey <TBracey@bondfield.com>; 'Polny, Danny (IO)' <Danny.Polny@infrastructureontario.ca>; 'McNally, Denise (IO)'

<Denise.McNally@infrastructureontario.ca>; Patrick Gaskin <PGaskin@cmh.org>; Bulat, Dražen <dbulat@millerthomson.com>; Mahar, Kyla <kmahar@millerthomson.com>

Subject: **[**EXT**]** CMH Critical Issues List

Dear Adrian and Paul

In follow up to the meeting that you had with Patrick Gaskin on May 15 and the subsequent Works Committee meeting held on May 21 that Paul Bordieri attended, I am taking this opportunity to formally get back to you regarding the building project's outstanding critical issues list. In total, there are 10 critical issues that remain to be completed prior to the Hospital being able to reach Interim Completion (IC).

These issues are not new. Many of them were identified in mid January 2019 and have remained outstanding since then. When the list of critical items was prepared back in January, all of the project

stakeholders (Bondfield, Perini, Stantec, Infrastructure Ontario, CMH) agreed that these items inhibit the Hospital's ability to operate in the new addition and need to be rectified prior to IC. The group of us have continued to monitor this list on a bi-weekly basis and either added to the list as new critical concerns arose or deleted from the list as work was completed. The list below is slightly shorter than the list we reviewed at the May 21 Works Committee meeting, as it incorporates the latest project update and the work that has recently been completed, and allows the roof leaks in the existing building to be addressed post IC should a plan and a corrective action not be identified and implemented before then.

The 10 remaining critical issues are as follows:

- 3.0 Nurse Call System
- 6.0 Rubber Flooring (Level 2 Link)
- 13.0 Air Balancing Operating Rooms/Duct Cleaning
- 15.0 Deficiency Roofing –New Addition
- 16.0 Defective Cladding/Building envelope
 - 16.1 Bird Screen at top and Bottom of wall
 - 16.2 Thermal scan repairs
 - 16.3 SI536 Bird Screen at elevation expansion joints
- 20.0 Security System
- 23.0 Interim Completion Deliverables
- 28.0 Exterior Door/Alumicor Condensation
- 32.0 Deficiencies on Level 0 and 1 that inhibit the intended use of this space
- 35.0 Link L2 Top Coat Bubbles on Columns

I would ask that you revise your most recently distributed schedule to ensure all of the above issues are incorporated and, if necessary, revise the targeted IC date. If possible, please share the revised schedule with us prior to next Tuesday's Works Committee meeting so we can review it. We hope we can spend some time at the meeting reviewing the updated schedule with you.

Thank you, and I look forward to receiving the updated schedule.

Mike

Mike Prociw

Vice President, Finance & Corporate Services, CFO & CIO

Telephone: 519-621-2333 ext. 2414

Fax: 519-740-4953

Email: mprociw@cmh.org



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IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

Court File No. CV-18-610233-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Fax: (416) 865-2840

Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897

Fax: (416) 865-3710

Email: bkolenda@litigate.com

Jonathan McDaniel (73750F)

Tel: (416) 865-9555

Fax: (416) 865-1180

Email: jmcdaniel@litigate.com

Lawyers for Zurich Insurance Company Ltd.

**ONTARIO
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COMMERCIAL LIST**

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**CROSS-MOTION RECORD OF
ZURICH INSURANCE COMPANY LTD.
(Returnable August 1, 2019)**

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940
Fax: (416) 865-2840
Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897
Fax: (416) 865-3710
Email: bkolenda@litigate.com

Jonathan McDaniel (73750F)

Tel: (416) 865-9555
Fax: (416) 865-1180
Email: jmcdaniel@litigate.com

Lawyers for Zurich Insurance Company Ltd.